# TAXATION LAW

I. General Principles of Taxation

A. Definition and concept of taxation

B. Nature of taxation

**Congress passed a sin tax law that increased the tax rates on cigarettes by 1,000%. The law was thought to be sufficient to drive many cigarette companies out of business, and was questioned in court by a cigarette company that would go out of business because it would not be able to pay the increased tax.**

**The cigarette company is __________ (1%) (2013 Bar Question)**

(A) wrong because taxes are the lifeblood of the government
(B) wrong because the law recognizes that the power to tax is the power to destroy
(C) correct because no government can deprive a person of his livelihood
(D) correct because Congress, in this case, exceeded its power to tax

**SUGGESTED ANSWER:**

(B) wrong because the law recognizes that the power to tax is the power to destroy

In McCulloch v. Maryland Chief Justice Marshall declared that the power to tax involves the power to destroy. This maxim only means that the power to tax includes the power to regulate even to the extent of prohibition or destruction of businesses. The reason is that the legislature has the inherent power to determine who to tax, what to tax and how much tax is to be imposed. Pursuant to the regulatory purpose of taxation, the legislature may impose tax in order to discourage or prohibit things or enterprises inimical to the public welfare.

In the given problem, the legislature's imposition of prohibitive sin tax on cigarettes is congruent with its purpose of discouraging the public form smoking cigarettes which are hazardous to health.

C. Characteristics of taxation

**XYZ Corporation manufactures glass panels and is almost at the point of insolvency. It has no more cash and all it has are unsold glass panels. It received an assessment from the BIR for deficiency income taxes. It wants to pay but due to lack of cash, it seeks permission to pay in kind with glass panels.**

**Should the BIR grant the requested permission? (1%) (2013 Bar Question)**

(A) It should grant permission to make payment convenient to taxpayers.
(B) It should not grant permission because a tax is generally a pecuniary burden.
(C) It should grant permission; otherwise, XYZ Corporation would not be able to pay.

(D) It should not grant permission because the government does not have the storage facilities for glass panels.

**SUGGESTED ANSWER:**

(B) It should not grant permission because a tax is generally a pecuniary burden. This principle is one of the attributes or characteristics of tax.

D. Power of taxation compared with other powers

1. Police power
2. Power of eminent domain

E. Purpose of taxation

1. Revenue-raising
2. Non-revenue/special or regulator

**Money collected from taxation shall not be paid to any religious dignitary EXCEPT when: (2011 Bar Question)**

(A) the religious dignitary is assigned to the Philippine Army
(B) it is paid by a local government unit
(C) the payment is passed in audit by the COA
(D) it is part of a lawmaker's pork barrel

**SUGGESTED ANSWER:**

(A) the religious dignitary is assigned to the Philippine Army

F. Principles of sound tax system

1. Fiscal adequacy
2. Administrative feasibility

**A law that allows taxes to be paid either in cash or in kind is valid.**

**SUGGESTED ANSWER:**

True. There is no law which requires the payment of taxes in cash only. However, a law allowing payment of taxes in kind, although valid, may pose problems of valuation, hence, will violate the principle of administrative feasibility. (BAR 2009)

3. Theoretical justice

G. Theory and basis of taxation

1. Lifeblood theory

**Briefly explain the following doctrines: lifeblood doctrine; necessity theory; benefits received principle; and doctrine of symbiotic relationship. (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

The following doctrines, explained:

a. Lifeblood Doctrine – Without revenue raised from taxation, the government will not survive, resulting in detriment to society. Without taxes, the government would be paralyzed for lack of motive power to activate and operate it. *(CIR v. Algue, Inc., G.R. No. L-28896, February 17, 1988, 158 SCRA 9)*

b. Necessity Theory – The exercise of the power to tax emanates from necessity, because without taxes, government cannot fulfill its mandate of promoting the general welfare and well being of the people. *(CIR v. Bank of Philippine Islads, G.R. No. 134062, April 17, 2007, 521 SCRA 373)*

c. Benefits received principle – Taxpayers receive benefits from taxes through the protection the State affords to them. For the protection they get arises their obligation to support the government through payment of taxes. *(CIR v. Algue, Inc., G.R. No. L-28896, February 17, 1988, 158 SCRA 9)*

d. Doctrine of symbiotic relationship - Taxation arises because of reciprocal relation of protection and support between the State and taxpayers. The State gives protection and for it to continue giving protection, it must be supported by the taxpayers in the form of taxes. *(CIR v. Algue, Inc., G.R. No. L-28896, February 17, 1988, 158 SCRA 9)*

**Which statement below expresses the lifeblood theory? (2012 BAR)**

a) The assessed taxes must be enforced by the government.
b) The underlying basis of taxation is government necessity, for without taxation, a government can neither exist nor endure;
c) Taxation is an arbitrary method of exaction by those who are in the seat of power;
d) The power of taxation is an inherent power of the sovereign to impose burdens upon subjects and objects within its jurisdiction for the purpose of raising revenues.

**SUGGESTED ANSWER:**

b) The underlying basis of taxation is government necessity, for without taxation, a government can neither exist nor endure

Taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty, the exercise of taxing power

derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people. (National Power Corporation vs. City of Cabanatuan)

**Anne Lapada, a student activist, wants to impugn the validity of a tax on text messages. Aside from claiming that the law adversely affects her since she sends messages by text, what may she allege that would strengthen her claim to the right to file a taxpayer's suit? (2011 Bar Question)**

(A) That she is entitled to the return of the taxes collected from her in case the court nullifies the tax measure.
(B) That tax money is being extracted and spent in violation of the constitutionally guaranteed right to freedom of communication.
(C) That she is filing the case in behalf of a substantial number of taxpayers.
(D) That text messages are an important part of the lives of the people she represents.

**SUGGESTED ANSWER:**

(B) That tax money is being extracted and spent in violation of the constitutionally guaranteed right to freedom of communication.

**Real property taxes should not disregard increases in the value of real property occurring over a long period of time. To do otherwise would violate the canon of a sound tax system referred to as: (2011 Bar Question)**

(A) theoretical justice.
(B) fiscal adequacy.
(C) administrative feasibility.
(D) symbiotic relationship.

**SUGGESTED ANSWER:**

(B) fiscal adequacy

**Explain the principles of a sound tax system. (2015 Bar Question)**

**SUGGESTED ANSWER:**

The principles of a sound tax system are the following:
a. Fiscal adequacy which means that the sources of revenue should be sufficient to meet the demands of public expenditures;
b. Equality or theoretical justice which means that the tax burden should be proportionate to the taxpayer's ability to pay (this is the so-called ability to pay principle); and

c. Administrative feasibility which means that the tax law should be capable of convenience, just and effective administration.

**Which theory in taxation states that without taxes, a government would be paralyzed for lack of power to activate and operate it, resulting in its destruction? (2011 Bar Question)**

(A) Power to destroy theory
(B) Lifeblood theory
(C) Sumptuary theory
(D) Symbiotic doctrine

**SUGGESTED ANSWER:**

(B) Lifeblood theory.

**The power to tax is the power to destroy. Is this always so? (2011 Bar Question)**

(A) No. The Executive Branch may decide not to enforce a tax law which it believes to be confiscatory.
(B) Yes. The tax collectors should enforce a tax law even if it results to the destruction of the property rights of a taxpayer.
(C) Yes. Tax laws should always be enforced because without taxes the very existence of the State is endangered.
(D) No. The Supreme Court may nullify a tax law, hence, property rights are not affected.

**SUGGESTED ANSWER:**

(D) No. The Supreme Court may nullify a tax law, hence, property rights are not affected.

2. Necessity theory
3. Benefits-protection theory (Symbiotic relationship)
4. Jurisdiction over subject and objects

H. Doctrines in taxation

1. Prospectivity of tax laws
2. Imprescriptibility
3. Double taxation

**Jennifer is the only daughter of Janina who was a resident in Los Angeles, California, U.S.A. Janina died in the U.S. leaving to Jennifer one million shares of Sun Life (Philippines), Inc., a corporation organized and existing under the laws of the Republic of the Philippines. Said shares were held in trust for Janina by the Corporate Secretary of Sun Life and the latter can vote the shares and receive dividends for Janina. The Internal Revenue Service (IRS) of the U.S. taxed the shares on the ground that Janina was domiciled in the U.S. at the time of her death.**

**[a] Can the CIR of the Philippines also tax the same shares? Explain. (2.5%)**

**[b] Explain the concept of double taxation. (2.5%) (2016 BAR)**

**SUGGESTED ANSWER:**

(A) Yes. The property being a property located in the Philippines, it is subject to the Philippine estate tax irrespective of the citizenship or residence of the decedent (Sec. 85, NIRC). However, if Janina is a non-resident alien at the time of her death, the transmission of the shares of stock can only be taxed applying the principle of reciprocity (Sec. 104, NIRC).

(8) Double taxation occurs when the same subject or object of taxation is taxed twice when it should be taxed but once. Double taxation is prohibited when it is an imposition of taxes on the same subject matter, for the same purpose, by the same taxing authority within the same jurisdiction, during the same taxing period, with the same kind or character of a tax (84 C.J.S.131-132). It is permissible if taxes are of different nature or character, or the two taxes are imposed by different taxing authorities (Villanueva v. City of Iloilo, G.R. No. L-26521, December 28,1968, 26 SCRA 578).

**Choose the correct answer. Double Taxation - (1%) (2014 Bar Question)**

(A) is one of direct duplicate taxations wherein two (2) taxes must be imposed on the same subject matter, by the same taxing authority, within the same jurisdiction, during the same period, with the same kind or character of tax, even if the purposes of imposing the same are different.
(B) is forbidden by law; and therefore, it is a valid defense against the validity of a tax measure.
(C) means taxing the same property twice when it should be taxed only once; it is tantamount to taxing the same person twice by the same jurisdiction for the same thing.
(D) exists when a corporation is assessed with local business tax as a manufacturer, and at the same time, value-added tax as a person selling goods in the course of trade or business.

**SUGGESTED ANSWER :**

A. Double taxation is one of direct duplicate taxations wherein two (2) taxes must be imposed on the same subject matter, by the same taxing authority, within the same jurisdiction, during the same period, with the same kind of character of tax, even if the purposes of imposing the same are different.

a. Strict sense

**Differentiate between double taxation in the strict sense and in a broad sense and give an example of each. (2015 Bar Question)**

**SUGGESTED ANSWER:**

Double taxation in the strict sense pertains to the direct double taxation. This means that the taxpayer is taxed twice by the same taxing authority, within the same taxing jurisdiction, for the same property and same purpose.

On the other hand, double taxation in broad sense pertains to indirect double taxation. This extends to all cases in which there is a burden of two or more impositions. It is the double taxation other than those covered by direct double taxation.

b. Broad sense
c. Constitutionality of double taxation
d. Modes of eliminating double taxation

**Upon his retirement, Alfredo transferred his savings derived from his salary as a marketing assistant to a time deposit with AAB Bank. The bank regularly deducted 20% final withholding tax on the interest income from the time deposit.**

**Alfredo contends that the 20% final tax on the interest income constituted double taxation because his salary had been already subjected to withholding tax.**

**Is Alfredo's contention correct? Explain your answer. (3%) (2017 BAR)**

**SUGGESTED ANSWER:**

No. Double taxation means taxing for the same tax period the same thing or activity twice, when it should be taxed but once, for the same purpose and with the same kind or character of tax. *(CIR v. Citytrust Investment Phils., G.R. Nos. 139786, 140857, September 27, 2006)* The 20% final tax is imposed on the interest income, while the tax earlier withheld is on the salary or compensation income. Thus, though both pertain to income tax, they do not pertain to the same thing or activity and consequently, no double taxation exists.

**In 2009, Caruso, a resident Filipino citizen, received dividend income from a U.S.-based corporation which owns a chain of Filipino restaurants in the West Coast, U.S.A. The dividend remitted to Caruso is subject to U.S. withholding tax with respect to a non-resident alien like Caruso.**

**A. What will be your advice to Caruso in order to lessen the impact of possible double taxation on the same income? (3%)**

**SUGGESTED ANSWER:**

Caruso has the option either to claim the amount of income tax withheld in U.S. as a deduction from his gross income in the Philippines, or to claim it as a tax credit (Sec. 34(C)(1)(b), NIRC).

**B. Would your answer in A. be the same if Caruso became a U.S. immigrant in 2008 and had become a non-resident Filipino citizen? Explain the difference in treatment for Philippine income tax purposes. (3%)**

**SUGGESTED ANSWER:**

No. The income from abroad of a non-resident citizen is exempt from the Philippine income tax; hence, there is no international double taxation on said income (Sec. 23, NIRC).

**Bank A deposit money with Bank B which earns interest that is subjected to the 20% final withholding tax. At the same time, Bank A is subjected to the 5% gross receipts tax on its interest income on loan transactions to customers. Which statement below INCORRECTLY describes the transaction? (2012 BAR)**

a) There is double taxation because two taxes – income tax and gross receipts tax are imposed on the interest incomes described above and double taxation is prohibited under the 1987 Constitution
b) There is no double taxation because the first tax is income tax, while the second tax is business tax;
c) There is no double taxation because the income tax is on the interest income of Bank A on its deposits with Bank B (passive income), while the gross receipts tax is on the interest income received by Bank A from loans to its debtor-customers (active income);
d) Income tax on interest income of deposits of Bank A is a direct tax, while GRT on interest income on loan transaction is and tax.

**SUGGESTED ANSWER:**

a) There is double taxation because two taxes – income tax and gross receipts tax are imposed on the interest incomes described above and double taxation is prohibited under the 1987 Constitution

There is no double taxation if the law imposes two different taxes on the same income, business or property. First, the taxes herein are imposed on two different subject matters. The subject matter of the FWT [Final Withholding Tax] is the passive income generated in the form of interest on deposits and yield on deposit substitutes, while the subject matter of the GRT [Gross Receipts Tax] is the privilege of engaging in the business of banking. Second, although both taxes are national in scope because they are imposed by the same taxing authority - the national government under the Tax Code - and operate within the same Philippine jurisdiction for the same purpose of raising revenues, the taxing periods they affect are different. The FWT is deducted and

withheld as soon as the income is earned, and is paid after every calendar quarter in which it is earned. On the other hand, the GRT is neither deducted nor withheld, but is paid only after every taxable quarter in which it is earned. (Commissioner of Internal Revenue vs. BPI, G.R. No. 147375)

**Double taxation in its general sense means taxing the same subject twice during the same taxing period. In this sense, double taxation: (2011 Bar Question)**

(A) violates substantive due process.
(B) does not violate substantive due process.
(C) violates the right to equal protection.
(D) does not violate the right to equal protection.

**SUGGESTED ANSWER:**

(C) violates the right to equal protection.

**Mr. Alas sells shoes in Makati through a retail store. He pays the VAT on his gross sales to the BIR and the municipal license tax based on the same gross sales to the City of Makati. He comes to you for advice because he thinks he is being subjected to double taxation.**

**What advice will you give him? (1%) (2013 Bar Question)**

(A) Yes, there is double taxation and it is oppressive.
(B) The City of Makati does not have this power.
(C) Yes, there is double taxation and this is illegal in the Philippines.
(D) Double taxation is allowed where one tax is imposed by the national government and the other by the local government.

**SUGGESTED ANSWER:**

(D) Double taxation is allowed where one tax is imposed by the national government and the other by the local government.

There is double taxation when one tax is imposed by the national government and the other is imposed by a local government unit.4 However, the 1987 Constitution does not forbid double taxation. In Pepsi-Cola Bottling Company of the Philippines, Inc. v. Municipality of Tanauan (G.R. No. L-31156, February 27, 1976), the Supreme Court declared that double taxation does not violate the uniformity rule nor does it infringe the equal protection guarantee just because one tax is imposed by the national government and the other tax is levied by a local government unit.

4. Escape from taxation
    a. Shifting of tax burden
    b. Tax avoidance

**Choose the correct answer. Tax Avoidance – (2014 Bar Question)**

(A) is a scheme used outside of those lawful means and, when availed of, it usually subjects the taxpayer to further or additional civil or criminal liabilities.

(B) is a tax saving device within the means sanctioned by law.

(C) is employed by a corporation, the organization of which is prompted more on the mitigation of tax liabilities than for legitimate business purpose.

(D) is any form of tax deduction scheme, regardless if the same is legal or not.

**SUGGESTED ANSWER :**

B. Tax avoidance is a tax-saving device within the means sanctioned by law.

c. Tax evasion

**Lucky V Corporation (Lucky) owns a IO-storey building on a 2,000 square meter lot in the City of Makati. It sold the lot and building to Rainier. for P80 million. One month after, Rainier sold the lot and building to Healthy Smoke Company (HSC) for P200 million. Lucky filed its annual tax return and declared its gain from the sale of the lot and building in the amount of P750,000.00.**

**An investigation conducted by the BIR revealed that two months prior to the sale of the properties to Rainier, Lucky received P40 million from HSC and not from Rainier. Said amount of P40 million was debited by HSC and reflected in its trial balance as "other inv. - Lucky Bldg." The month after, another P40 million was reflected in HSC's trial balance as "other inv. - Lucky Bldg." The BIR concluded that there is tax evasion since the real buyer of the properties of Lucky is HSC and not Rainier. It issued an assessment for deficiency income tax in the amount of P79 million against Lucky. Lucky argues that it resorted to tax avoidance or a tax saving device, which is allowed by the NIRC and BIR rules since it paid the correct taxes based on its sale to Rainier. On the other hand, Rainier and HSC also paid the prescribed taxes arising from the sale by Rainier to HSC. Is the BIR correct in assessing taxes on Lucky? Explain. (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

Yes. The sale of the property by Lucky V Corporation (Lucky) to Rainer and consequently the sale by Rainer to HSC being prompted more on the mitigation of tax 'liabilities than for legitimate business purposes, therefore Constitutes tax evasion. The real buyer from Lucky is HBC as evidenced by the direct receipt of payments by the former from the latter where the latter recorded "other investments — Lucky Building". The scheme of resorting to a two-step transaction in selling the property to the ultimate buyer in order to escape paying higher taxes is considered as outside of those lawful means allowed in mitigating tax liabilities which makes Lucky criminally and civilly liable.

Hence, the BIR is correct in assessing taxes on Lucky *(CIR v. Estate of Benigno P. Todo, Jr., G.R. No.147188, September 14, 2004, 438 SCRA 290).*

**You are the retained tax counsel of ABC Corp. Your client informed you that they have been directly approached with a proposal by a BIR insider (i.e., a middle rank BIR official) on the tax matter they have referred to you for handling. The BIR insider's proposal is to settle the matter by significantly reducing the assessment, but he will get 50% of the savings arising from the reduced assessment.**

**What tax, criminal and ethical considerations will you take into account in giving your advice? Explain the relevance of each of these considerations. (2013 Bar Question)**

**SUGGESTED ANSWER:**

As a lawyer, I have the responsibility to give only a lawful advice. Canon I of the Code of Professional Responsibility mandates me to "uphold the Constitution, obey the laws of the land and promote respect for law and legal processes. Rule 1.01 states that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Rule 1.02 provides that "a lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system."

Therefore, I will advise my client not to agree with the proposal of the BIR officer. Agreeing with the proposal will result in criminal prosecution under the following laws:

Under the NIRC, the officers of the board who authorized the tax evasion will be liable under Section 253(C), while the corporation shall be liable under Section 256.

The BIR official is liable under Section 269 which provides for the violations committed by government enforcement officers. Paragraph (d) of Section 269 provides that one of these violations is "offering or undertaking to accomplish, file or submit a report or assessment on a taxpayer without the appropriate examination of the books of accounts or tax liability, or offering or undertaking to submit a report or assessment less than the amount due the Government for any consideration or compensation, or conspiring or colluding with another or others to defraud the revenues or otherwise violate the provisions of this Code."

Under the Revised Penal Code, the officers of the corporation shall be liable under Article 212 for corruption of public officials while the BIR official is liable for direct bribery.

Both my client and the BIR official will also be liable under Republic Act No. 3019 or the Anti- Graft and Corrupt Practices Act.

**On August 31, 2014, Haelton Corporation (HC), thru its authorized representative Ms. Pares, sold a 16-storey commercial building known as Haeltown Building to Mr. Belly for P100 million. Mr. Belly, in turn, sold the same property on the same day to Bell Gates, Inc. (BGI) for P200 million. These two (2) transactions were evidenced by two (2) separate Deeds of Absolute Sale notarized on the same day by the same notary public.**

**Investigations by the Bureau of Internal Revenue (BIR) showed that:**

**(1) the Deed of Absolute Sale between Mr. Belly and BGI was notarized ahead of the sale between HC and Mr. Belly; (2) as early as May 17, 2014, HC received P40 million from BGI, and not from Mr. Belly; (3) the said payment of P40 million was recorded by BGI in its books as of June 30, 2014 as investment in Haeltown Building; and (4) the substantial portion of P40 million was withdrawn by Ms. Pares through the declaration of cash dividends to all its stockholders.**

**Based on the foregoing, the BIR sent Haeltown Corporation a Notice of Assessment for deficiency income tax arising from an alleged simulated sale of the aforesaid commercial building to escape the higher corporate income tax rate of thirty percent (30%). What is the liability of Haeltown Corporation, if any? (2014 Bar Question)**

**SUGGESTED ANSWER :**

The tax planning scheme adopted by Haeltown Corporation constitutes tax evasion. According to CIR v. Estate of Benigno Toda (G.R. No. 147188, September 14, 2004), a transaction where a taxpayer made it appear that there were two sales of the property was considered "tainted with fraud." The sole purpose of acquiring and transferring title of the property on the same day was to create a tax shelter. The sale to Mr. Belly (which is subject to individual capital gains tax) was to mislead the BIR and avoid the higher corporate income tax.

5. Exemption from taxation
    a. Meaning of exemption from taxation
    b. Nature of tax exemption
    c. Kinds of tax exemption
    d. Rationale/grounds for exemption
    e. Revocation of tax exemption

6. Compensation and set-off

**The doctrine of equitable recoupment allows a taxpayer whose claim for refund has prescribed to offset tax liabilities with his claim of overpayment.**

**SUGGESTED ANSWER:**

True. The doctrine arose from common law allowing offsetting of a prescribed claim for refund against a tax liability arising from the same transaction on which an overpayment is made and underpayment is due. The doctrine finds no application to cases where the taxes involved are totally unrelated, and although it seems equitable, it is not allowed in our jurisdiction (CIR v. VST, 104 Phil. 1062 [1958]). (BAR 2009)

7. Compromise
8. Tax amnesty
    a. Definition
    b. Distinguished from tax exemption

**Which of the following are NOT usually imposed when there is a tax amnesty? (2011 Bar Question)**
(A) Civil, criminal, and administrative penalties
(B) Civil and criminal penalties
(C) Civil and administrative penalties
(D) Criminal and administrative penalties

**SUGGESTED ANSWER:**

(A) Civil, criminal, and administrative penalties

9. Construction and interpretation
    a. Tax laws
    b. Tax exemption and exclusion
    c. Tax rules and regulations
    d. Penal provisions of tax laws
    e. Non-retroactive application to taxpayers

**Which of the following statement is NOT correct? (2012 BAR)**

a) In case of doubt, statutes levying taxes are constructed strictly the government;
b) The construction of a statute made by his predecessors is not binding upon the successor, if thereafter he becomes satisfied that a different construction should be given;
c) The reversal of a ruling shall not generally be given retroactive application, if said reversal will be prejudicial to the taxpayer;
d) A memorandum circular promulgated by the CIR that imposes penalty for violations of certain rules need not be published in a newspaper of general circulation or official gazette because it has the force and effect of law.

**SUGGESTED ANSWER:**

d) A memorandum circular promulgated by the CIR that imposes penalty for violations of certain rules need not be published in a newspaper of general circulation or official gazette because it has the force and effect of law.

A revenue memorandum circular shall not begin to be operative until after due notice thereof maybe fairly presumed. (Commissioner of Internal Revenue vs. Philippine Airlines, G.R. No. 180066, July 8, 2009)

**The BIR, through the Commissioner, instituted a system requiring taxpayers to submit to the BIR a summary list of their sales and purchases during the year, indicating the name of the seller or the buyer and the amount. Based on these lists, the BIR discovered that in 2004 ABC Corp. purchased from XYZ Corp. goods worthP5,000,000. XYZ Corp. did not declare these for income tax purposes as its reported gross sales for 2004was only P1,000,000.**

**Which of the following defenses may XYZ Corp. interpose in an assessment against it by the BIR? (1%) (2013 Bar Question)**

(A) The BIR has no authority to obtain third party information to assess taxpayers.
(B) The third party information is inadmissible as hearsay evidence.
(C) The system of requiring taxpayers to submit third party information is illegal for violating the right to privacy.
(D) None of the above.

**SUGGESTED ANSWER:**

(D) None of the above.

Section 6(B) of the NIRC authorizes the Commissioner to assess the property tax due from a taxpayer when he believes that the report the taxpayer submitted is false, incomplete, or erroneous. The same provision authorizes the Commissioner to amend the return from his own knowledge and from such information he can obtain through testimony or otherwise, which is deemed prima facie correct and sufficient for all legal purposes.

I. Scope and limitation of taxation

1. Inherent limitations

**Enumerate the four (4) inherent limitations on taxation. Explain each item briefly. (4%) (BAR 2009)**

**ANSWER:**

The inherent limitations on the power to tax are:

Taxation is for a public purpose. - The proceeds of the tax must be used (a) for the support of the State or (b) for some recognized objective of the government or to directly promote the welfare of the community.

Taxation is inherently legislative. - Only the legislature has full discretion as to the persons, property, occupation or business to be taxed provided these are all within the State's territorial jurisdiction. It can also finally determine the amount or rate of tax, the kind of tax to be imposed and the method of collection (1 Cooley 176184).

Taxation is territorial. - Taxation may be exercised only within the territorial jurisdiction of the taxing authority (61 Am. Jur. 88). Within the territorial jurisdiction, the taxing authority may determine the place of taxation" or " tax situs",

Taxation is subject to international comity. - This is a limitation which is founded on reciprocity designed to maintain a harmonious and productive relationships among the various states. Under international comity, a state must recognize the generally-accepted tenets of international law, among which are the principles of sovereign equality among states and of their freedom from suit without their consent, that limit the authority of a government to effectively impose taxes on a sovereign state and its instrumentalities, as well as on its property held, and activities undertaken in that capacity.

a. Public purpose
b. Inherently legislative
   i. Exceptions
      1. Delegation to local governments
      2. Delegation to the President
      3. Delegation to administrative agencies

**Which statement is WRONG? (2012 BAR)**

a) The power of taxation may be exercised by the government, its political subdivisions, and public utilities;
b) Generally, there is no limit on the amount of tax that may be imposed;
c) The money contributed as tax becomes part of the public funds;
d) The power of tax is subject to certain constitutional limitations.

**SUGGESTED ANSWER:**

a) The power of taxation may be exercised by the government, its political subdivisions, and public utilities

c. Territorial
   i. Situs of taxation
      a. Meaning

**Which among the following concepts of taxation is the basis for the situs of income taxation? (2011 Bar Question)**

(A) Lifeblood doctrine of taxation

(B) Symbiotic relation in taxation
(C) Compensatory purpose of taxation
(D) Sumptuary purpose of taxation

**SUGGESTED ANSWER:**

(B) Symbiotic relation in taxation

b. Situs of income tax
1. From sources within the Philippines

**Sure Arrival Airways (SAA) is a foreign corporation, organized under the laws of the Republic of Nigeria. Its commercial airplanes do not operate within Philippine territory, or service passengers embarking from Philippine airports. The firm is represented in the Philippines by its general agent, Narotel.**

**SAA sells airplane tickets through Narotel, and these tickets are serviced by SAA airplanes outside the Philippines. The total sales of airplane tickets transacted by Narotel for SAA in 2012 amounted to Pl0,000,000.00. The Commissioner of Internal Revenue (CIR) assessed SAA deficiency income taxes at the rate of 30% on its taxable income, finding that SAA's airline ticket sales constituted income derived from sources within the Philippines.**

**SAA filed a protest on the ground that the alleged deficiency income taxes should be considered as income derived exclusively from sources outside the Philippines since SAA only serviced passengers outside Philippine territory. It, thus, asserted that the imposition of such income taxes violated the principle of territoriality in taxation.**

**Is the theory of SAA tenable? Explain. (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

No. The activity which gives rise to the income is the sale of ticket in the Philippines, hence, the income from sale of tickets is an income derived from Philippine sources which is subject to the Philippine income tax. Accordingly, there is no violation of the principle of territoriality in taxation *(Air Canada v. CIR, G.R. No. 169507, January 11, 2016, 778 SCRA 131).*

(Note: As the case which is the basis of the answer was decided before the cut – off date for the 2016 Bar Examinations, it is recommended that this question be considered a bonus question, with any answer to be given full credit.)

**Guidant Resources Corporation, a corporation registered in Norway, has a 50 MW electric power plant in San Jose, Batangas. Aside from Guidant's income from its**

**power plant, which among the following is considered as part of its income from sources within the Philippines? (2011 Bar Question)**

(A) Gains from the sale to an Ilocos Norte power plant of generators bought from the United States.
(B) Interests earned on its dollar deposits in a Philippine bank under the Expanded Foreign Currency Deposit System.
(C) Dividends from a two-year old Norwegian subsidiary with operations in Zambia but derives 60% of its gross income from the Philippines.
(D) Royalties from the use in Brazil of generator sets designed in the Philippines by its engineers.

**SUGGESTED ANSWER:**
(A) Gains from the sale to an Ilocos Norte power plant of generators bought from the United States.

**Kenya International Airlines (KIA) is a foreign corporation, organized under the laws of Kenya. It is not licensed to do business in the Philippines. Its commercial airplanes do not operate within Philippine territory, or service passengers embarking from Philippine airports. The firm is represented in the Philippines by its general agent, Philippine Airlines (PAL), a Philippine corporation.**

**KIA sells airplane tickets through PAL, and these tickets are serviced by KIA airplanes outside the Philippines. The total sales of airline tickets transacted by PAL for KIA in 1997 amounted to P2,968,156.00. The Commissioner of Internal Revenue assessed KIA deficiency income taxes at the rate of 35% on its taxable income, finding that KIA's airline ticket sales constituted income derived from sources within the Philippines.**

**KIA filed a protest on the ground that the P2,968,156.00 should be considered as income derived exclusively from sources outside the Philippines since KIA only serviced passengers outside Philippine territory.**

**Is the position of KIA tenable? Reasons. (4%)**

**SUGGESTED ANSWER:**

KIA's position is not tenable. The revenue it derived in 1997 from sales of airplane tickets in the Philippines, through its agent PAL, is considered as income from within the Philippines, subject to the 35% tax based on its taxable income pursuant to Section 25(a)( 1) of the Tax Code of 1977. The transacting of business in the Philippines through its local sales agent, makes KIA a resident foreign corporation despite the absence of landing rights, thus, it is taxable on income derived from within. The source of an income is the property, activity or service that produced the income. In the instant case, it is the sale of tickets in the Philippines which is the activity that produced the

income. KIA's income being derived from within, is subject to Philippine income tax (CIR v. British Overseas Airways Corporation, 149 SCRA 395, [1987]).

Note: The taxable year involved in the problem is 1997, hence, the suggested answer above follows the applicable provision of the old Tax Code (National Internal Revenue Code of1977) then in effect and the prevailing jurisprudence on the matter. However, with the adoption of the National Internal Revenue Code ofl997(RA 8424) which took effect on January 1, 1998, it is expected that the bar candidates have lost track of the change in the tax law which transpired more than a decade ago. For this reason, it is respectfully requested that an answer based on the provisions of the New Tax Code shall be given full credit. Accordingly, an answer framed in this wise should also be considered as a correct answer, viz:

**ANOTHER SUGGESTED ANSWER:**

Yes. KIA is a non-resident foreign corporation which is taxable only on income from within. The income of KIA as an international air carrier is derived from the sale of transportation services. Compensation for services is an income from within if the services are performed in the Philippines (Section 42(A)(3), NIRC). The origination of the flight is determinative of the source of the income of the international air carrier. If the flight originates in the Philippines to a foreign destination, the income is an income from within; if it originates in a foreign country to any destination, the income is from without. In the case at bar, no flight will originate from the Philippines because KIA is not licensed to do business here. Hence, the income is not taxable in the Philippines (Section 28(A)(3)(a), NIRC). (BAR 2009)

2. From sources without the Philippines

**Triple Star, a domestic corporation, entered into a Management Service Contract with Single Star, a non-resident foreign corporation with no property in the Philippines. Under the contract, Single Star shall provide managerial services for Triple Star's Hongkong branch. All said services shall be performed in Hongkong.**

**Is the compensation for the services of Single Star taxable as income from sources within the Philippines? Explain. (2014 Bar Question)**

**SUGGESTED ANSWER:**

No. Pursuant to the case of Commissioner of Internal Revenue v. Baier-Nickel (G.R. No. 153793, August 29, 2006), the factor which determines the source of income for personal services is the place where the services were actually rendered. Since Single Star, a non-resident foreign corporation, will perform all the managerial services for Triple Star's branch in Hong Kong, all compensation income arising from the performance of such services will be considered income from sources outside the Philippines, and therefore not subject to Philippine income tax.

3. Income partly within and partly without the Philippines

c. Situs of property taxes
1. Taxes on real property
2. Taxes on personal property

d. Situs of excise tax
1. Estate tax
2. Donor's tax

e. Situs of business tax
1. Sale of real property
2. Sale of personal property
3. Value-Added Tax (VAT)

d. International comity

**ABCD Corporation (ABCD) is a domestic corporation with individual and corporate shareholders who are residents of the United States. For the 2nd quarter of 1983, these U.S.- based individual and corporate stockholders received cash dividends from the corporation. The corresponding withholding tax on dividend income — 30% for individual and 35% for corporate non-resident stockholders — was deducted at source and remitted to the BIR.**

**On May 15,1984, ABCD filed with the Commissioner of Internal Revenue a formal claim for refund, alleging that under the RP-US Tax Treaty, the deduction withheld at source as tax on dividends earned was fixed at 25% of said income. Thus, ABCD asserted that it overpaid the withholding tax due on the cash dividends given to its non-resident stockholders in the U.S. the Commissioner denied the claim.**

**On January 17, 1985, ABCD filed a petition with the Court of Tax Appeals (CTA) reiterating its demand for refund.**

**Is the contention of ABCD Corporation correct? Why or why not? (3%)**

**SUGGESTED ANSWER:**

Yes. The provision of a treaty must take precedence over and above the provisions of the local taxing statute consonant with the principle of the international comity. Tax treaties are accepted limitations to the power of taxation. Thus, the CTA should apply the treaty provision so that the claim for refund representing the difference between the amount actually withheld and paid to the BIR and the amount due and payable under the treaty, should be granted (Hawaiian-Philippine Company v. CIR, CTA Case No. 3887, May 31, 1988).

**ANOTHER SUGGESTED ANSWER:**

The contention of ABCD Corporation that it overpaid the withholding tax is correct provided it can establish:

(1) The existence of RP-US Tax Treaty is imposing a lower rate of tax of 25%; (2) the said tax treaty is applicable to its case; and (3) its payment with the BIR of a tax based on a higher rate of 30% and 35%, respectively. (BAR 2009)

e. Exemption of government entities, agencies and instrumentalities

2. Constitutional limitations
a. Provisions directly affecting taxation
    i. Prohibition against imprisonment for non-payment of poll tax
    ii. Uniformity and equality of taxation

**Heeding the pronouncement of the President that the worsening traffic condition in the metropolis was a sign of economic progress, the Congress enacted Republic Act No. 10701, also known as An Act Imposing a Transport Tax on the Purchase of Private Vehicles.**

**Under RA 10701, buyers of private vehicles are required to pay a transport tax equivalent to 5% of the total purchase price per vehicle purchased. RA 10701 provides that the Land Transportation Office (LTO) shall not accept for registration any new vehicles without proof of payment of the 5% transport tax. RA 10701 further provide that existing owners of private vehicles shall be required to pay a tax equivalent to 5% of the current fair market value of every vehicle registered with the LTO. However, RA 10701 exempts owners of public utility vehicles and the Government from the coverage of the 5% transport tax.**

**A group of private vehicle owners sue on the ground that the law is unconstitutional for contravening the Equal Protection Clause of the Constitution.**

**Rule on the constitutionality and validity of RA 10701. (5%) (2017 BAR)**

**SUGGESTED ANSWER:**

RA 10701 is valid and constitutional. A levy of tax is not unconstitutional because it is not intrinsically equal and uniform in its operation. The uniformity rule does not prohibit classification for purposes of taxation. *(British American Tobacco v. Jose Isidro N. Camacho, G.R. No. 163583, April 15, 2009)* Uniformity of taxation, like the kindred concept of equal protection, merely requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities. Uniformity does not forfend classification as long as: (1) the standards that are used therefor are substantial and not arbitrary, (2) the categorization is germane to achieve the legislative purpose, (3) the law applies, all things being equal, to both present and future

conditions, and (4) the classification applies equally well to all those belonging to the same class. *(Rufino R. Tan v. Ramon R. Del Rosario, Jr., G.R. Nos. 109289, October 3, 1994, 237 SCRA 324).* All of the foregoing requirements of a valid classification having been met and those which are singled out are a class in themselves, there is no violation of the "Equal Protection Clause" of the Constitution.

**The municipality of San Isidro passed an ordinance imposing a tax on installation managers. At that time, there was only one installation manager in the municipality; thus, only he would be liable for the tax.**

**Is the law constitutional? (1%)(2013 Bar Question)**

(A) It is unconstitutional because it clearly discriminates against this person.
(B) It is unconstitutional for lack of legal basis.
(C) It is constitutional as it applies to all persons in that class.
(D) It is constitutional because the power to tax is the power to destroy.

**SUGGESTED ANSWER:**

(C) It is constitutional as it applies to all persons in that class.

The ordinance imposing tax on installation managers does not violate the equal protection clause under Section 1, Article III of the Constitution and the uniformity rule under Section 28, Article VI of the Constitution. The equal protection clause simply means that all persons subject to legislation shall be treated alike under like circumstances and conditions both in privileges conferred and liabilities imposed. On the other hand, the uniformity rule states that a tax is uniform when it operates with the same force and effect in every place where the subject of it is found. It does not signify an intrinsic but simply a geographical uniformity. (See: British American Tobacco v. Camacho, G.R. No. 163583, April 15, 2009)

In the given problem, the ordinance applies to all installation manager. In other words, the ordinance does not specifically identify who among the installation managers shall be liable for tax. The fact that there is only one installation manager in the municipality does not mean that the taxing authority singled him out as the only taxable person.

**Choose the correct answer. Tax laws - (1%) (2014 Bar Question)**

(A) may be enacted for the promotion of private enterprise or business for as long as it gives incidental advantage to the public or the State
(B) are inherently legislative; therefore, may not be delegated
(C) are territorial in nature; hence, they do not recognize the generally-accepted tenets of international law
(D) adhere to uniformity and equality when all taxable articles or kinds of property of the same class are taxable at the same rate

**SUGGESTED ANSWER :**

D. Tax laws adhere to uniformity and equality when all taxable articles or kinds of property of the same class are taxable at the same rate.

iii. Grant by Congress of authority to the president to impose tariff rates

iv. Prohibition against taxation of religious, charitable entities, and educational entities

**What is the rule on the taxability of income that a government educational institution derives from its school operations? Such income is: (2011 Bar Question)**

(A) subject to 10% tax on its net taxable income as if it is a proprietary educational institution.
(B) Exempt from income taxation if it is actually, directly, and exclusively used for educational purposes.
(C) subject to the ordinary income tax rates with respect to incomes derived from educational activities.
(D) Exempt from income taxation in the same manner as government-owned and controlled corporations.

**SUGGESTED ANSWER:**

(B)Exempt from income taxation if it is actually, directly, and exclusively used for educational purposes

v. Prohibition against taxation of non-stock, non-profit educational Institutions

**San Juan University is a non-stock, non-profit educational institution. It owns a piece of land in Caloocan City on which its three 2-storey school buildings stood. Two of the buildings are devoted to classrooms, laboratories, a canteen, a bookstore, and administrative offices. The third building is reserved as dormitory for student athletes who are granted scholarships for a given academic year.**

**In 2017, San Juan University earned income from tuition fees and from leasing a portion of its premises to various concessionaires of food, books, and school supplies.**

**a. Can the City Treasurer of Caloocan City collect real property taxes on the land and building of San Juan University? Explain your answer. (5%) (2017 BAR)**

**SUGGESTED ANSWER:**

a. Yes, but only on the leased portion. Article XIV, Section 4(3) of the 1987 Constitution provides that the assets of a non-stock, non-profit educational institution shall be exempt from taxes and duties only if the same are used actually, directly, and exclusively for educational purposes. The test of exemption from taxation is the use of the property for purposes mentioned in the Constitution. The leased portion of the building may be subject to real property tax since such lease is for commercial purposes, thereby, it removes the asset from the property tax exemption granted under the Constitution. *(CIR v. De La Salle University, Inc., G.R. Nos. 196596, 198841, 198941, November 9, 2016)*

**b. Is the income earned by San Juan University for the year 2017 subject to income tax? Explain your answer. (5%) (2017 BAR)**

**SUGGESTED ANSWER:**

b. No, provided that the revenues are used actually, directly, and exclusively for educational purposes as provided under Article XIV, Section 4(3) of the 1987 Constitution. The requisites for availing the tax exemption under Article XIV, Section 4 (3) are as follows: (1) the taxpayer falls under the classification non-stock, non-profit educational institution; and (2) the income it seeks to be exempted from taxation is used actually, directly and exclusively for educational purposes. Thus, so long as the requisites are met, the revenues may be exempt from tax. *(CIR v. De La Salle University, Inc., G.R. Nos. 196596, 198841, 198941, November 9, 2016)*

**A group of philanthropists organized a non-stock, non-profit hospital for charitable purposes to provide medical services to the poor. The hospital also accepted paying patients although none of its income accrued to any private individual; all income were plowed back for the hospital's use and not more than 30% of its funds were used for administrative purposes.**

**Is the hospital subject to tax on its income? If it is, at what rate? (2013 Bar Question)**

**SUGGESTED ANSWER:**

The non-stock, non-profit hospital's income from paying patients is subject to a preferential income tax of 10%.

In Commissioner of Internal Revenue v. St. Luke's Medical Center, the Supreme Court laid down the rules on the treatment of icome tax of non-profit hospitals. Pursuant to Sec. 30(E) and (G) of the NIRC, these hospitals are exempt from income tax with respect to their activities conducted exclusively for charitable or social welfare purposes. However, they are subject to a preferential income tax rate of 10% under charitable or social welfare purposes.

vi. Majority vote of Congress for grant of tax exemption

vii. Prohibition on use of tax levied for special purpose
viii. President's veto power on appropriation, revenue, tariff bills
ix. Non-impairment of jurisdiction of the Supreme Court
x. Grant of power to the local government units to create its own sources of revenue
xi. Flexible tariff clause
xii. Exemption from real property taxes

**Mr. Amado leased a piece of land owned by the Municipality of Pinagsabitan and built a warehouse on the property for his business operations. The Municipal Assessor assessed Mr. Amado for real property taxes on the land and the warehouse. Mr. Amado objected to the assessment, contending that he should not be asked to pay realty taxes on the land since it is municipal property.**

**Was the assessment proper? (2013 Bar Question)**

**SUGGESTED ANSWER:**

The assessment was proper.

Under Section 217 of the LGC, real property shall be classified, valued and assessed on the basis of its actual use regardless of where located, whoever owns it, and whoever uses it. A related and complementary provision is Section 234(a) of the LGC which provides that a real property owned by the Republic of the Philippines or any of its political subdivisions is exempt from realty taxes, except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

In the given problem, Mr. Arnado, as lessee of the land owned by the Municipality, is the actual user of the land and is liable for the realty taxes. Therefore, the assessment was proper.

**LLL is a government instrumentality created by Executive Order to be primarily responsible for integrating and directing all reclamation projects for the National Government. It was not organized as a stock or a non-stock corporation, nor was it intended to operate commercially and compete in the private market.**

**By virtue of its mandate, LLL reclaimed several portions of the foreshore and offshore areas of the Manila Bay, some of which were within the territorial jurisdiction of Q City. Certificates of title to the reclaimed properties in Q City were issued in the name of LLL in 2008. In 2014, Q City issued Warrants of Levy on said reclaimed properties of LLL based on the assessment for delinquent property taxes for the years 2010 to 2013.**

**A) Are the reclaimed properties registered in the name of LLL subject to real property tax?**

**B) Will your answer be the same in (A) if from 2010 to the present time, LLL is leasing portions of the reclaimed properties for the establishment and use of popular fastfood restaurants J Burgers, G Pizza, and K Chicken? (2015 Bar Question)**

**SUGGESTED ANSWER:**

A. The reclaimed properties are not subject to real property tax because LLL is a government instrumentality. Instrumentality refers to any agency of the National Government, not integrated within the department framework vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. Under the law, real property owned by the Republic of the Philippines (Republic) is exempt from real property tax unless the beneficial use thereof has been granted to a taxable person. When the title of the real property is transferred to LLL, the Republic remains the owner of the real property. Thus, such arrangement does not result in the loss of the tax exemption.

B. No. As a rule, properties owned by the Republic of the Philippines are exempt from real property tax except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. LLL leased out portions of the reclaimed properties to a taxable entity, such as the popular fastfood restaurant, hence the reclaimed properties are subject to real property tax.

**The Philippine-British Association, Inc. (Association) is a non-stock, non-profit organization which owns the St. Michael's Hospital (Hospital). Sec. 216 in relation to Sec. 215 of the LGC classifies all lands, buildings and other improvements thereon actually, directly, and exclusively used for hospitals as "special." A special classification prescribes a lower assessment than a commercial classification.**

**Within the premises of the Hospital, the Association constructed the St. Michael's Medical Arts Center (Center) which will house medical practitioners who will lease the spaces therein for their clinics at prescribed rental rates. The doctors who treat the patients confined in the Hospital are accredited by the Association.**

**The City Assessor classified the Center as "commercial" instead of "special" on the ground that the Hospital owner gets income from the lease of its spaces to doctors who also entertain out-patients. Is the City Assessor correct in classifying the Center as "commercial?" Explain. (5%) (2016 BAR)**

***SUGGESTED ANSWER:***

No. The Medical Arts Center is an integral part of the Hospital and should be classified for assessment purposes as “special”. The fact alone that the doctors holding clinics in the Center are those duly accredited by the Association who owns the

Hospital, and these doctors are the ones who can treat the Hospital's patients confined in it, takes away the said Medical Arts Center from being categorized as "commercial" since a tertiary hospital is required by law to have a pool of physicians who comprise the required medical departments in various medical fields (City Assessora Cebu City v. Association of Benevola de Cebu, Inc., G.R. No. 152904, June 2007, 524 SCRA 128).

xiii. No appropriation or use of public money for religious purposes
Origin of Revenue and Tariff Bills

b. Provisions indirectly affecting taxation
i. Due process
ii. Equal protection

**What is the "rational basis" test? Explain briefly. (2%) (2010 BAR)**

**SUGGESTED ANSWER:**

The "rational basis test" is applied to gauge the constitutionality of an assailed law in the face of an equal protection challenge. It has been held that "in areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification". Under the rational basis test, it is sufficient that the legislative classification is rationally related to achieving some legitimate State interest (British American Tobacco v. Camacho and Parayno, GR No. 163583, April 15, 2009).

**The City of Manila enacted Ordinance No. 55-66 which imposes a municipal occupation tax on persons practicing various professions in the city. Among those subjected to the occupation tax were lawyers. Atty. Mariano Batas, who has a law office in Manila, pays the ordinance-imposed occupation tax under protest. He goes to court to assail the validity of the ordinance for being discriminatory. Decide with reasons. (3%)**

**SUGGESTED ANSWER:**

The ordinance is valid. The ordinance is not discriminatory because it complies with the rule of equality and uniformity in taxation. Equality and uniformity in local taxation means that all subjects or objects of taxation belonging to the same class shall be taxed at the same rate within the territorial jurisdiction of the taxing authority or local government unit and not necessarily in comparison with other units although belonging to the same political subdivision. In fine, uniformity is required only within the geographical limits of the taxing authority. It is not for the Court to judge what particular cities or municipalities should be empowered to impose occupation tax. In the case at bar, the imposition of the occupation tax to persons exercising various professions in

the city is well within the authority ofthe City of Manila (Punsalanet. al. v. City of Manila, 95 Phil. 46 [1954]). (BAR 2009)

iii. Religious freedom
iv. Non-impairment of obligations of contracts

J. Stages of taxation
1. Levy
2. Assessment and collection
3. Payment

**True or False. The Tax Code allows an individual taxpayer to pay in two equal installments, the first installment to be paid at the time the return is filed, and the second on or before July 15 of the same year, if his tax due exceeds P2,000. (2010 Bar Question)**

**SUGGESTED ANSWER:**

True. [Sec. 56(A)(A), NIRC]

4. Refund

**The actual effort exerted by the government to effect the exaction of what is due from the taxpayer is known as: (2011 Bar Question)**
**(A) assessment.**
**(B) levy.**
**(C) payment.**
**(D) collection.**

**SUGGESTED ANSWER:**

(D) collection

**Although the power of taxation is basically legislative in character, it is NOT the function of Congress to: (2011 Bar Question)**
(A) fix with certainty the amount of taxes.
(B) collect the tax levied under the law.
(C) identify who should collect the tax.
(D) determine who should be subject to the tax.

**SUGGESTED ANSWER:**

(B) collect the tax levied under the law

K. Definition, nature, and characteristics of taxes
L. Requisites of a valid tax

M. Tax as distinguished from other forms of exactions
N. Kinds of taxes

II. National Internal Revenue Code (NIRC) of 1997, as amended
   A) Income taxation
      1. Income tax systems
         a. Global tax system
         b. Schedular tax system
         c. Semi-schedular or semi-global tax system

**The Philippines adopted the semi-global tax system, which means that: (2012 BAR)**

a) All taxable incomes, regardless of the nature of income, are added together to arrive at gross income, and all allowable deductions are deducted from the gross income to arrive at the taxable income;
b) All incomes subject to final withholding taxes liable to income tax under the schedular tax system, while all ordinary income as well as income not subject to final withholding tax under the global tax system;
c) All taxable incomes are subject to final withholding taxes under the schedular tax system;
d) All taxable incomes from sources within and without the Philippines are liable to income tax.

**SUGGESTED ANSWER:**

b) All incomes subject to final withholding taxes liable to income tax under the schedular tax system, while all ordinary income as well as income not subject to final withholding tax under the global tax system.

      2. Features of the Philippine income tax law
         a) Direct tax
         b) Progressive

**An example of a tax where the concept of progressivity finds application is the: (2011 Bar Question)**

(A) income tax on individuals.
(B) excise tax on petroleum products.
(C) value-added tax on certain articles.
(D) amusement tax on boxing exhibitions.

**SUGGESTED ANSWER:**

(A) income tax on individuals.

c) Comprehensive
d) Semi-schedular or semi-global tax system

3. Criteria in imposing Philippine income tax
   a) Citizenship principle
   b) Residence principle
   c) Source principle

**Alain Descartes, a French citizen permanently residing in the Philippines, received several items during the taxable year. Which among the following is NOT subject to Philippine income taxation? (2011 Bar Question)**

(A) Consultancy fees received for designing a computer program and installing the same in the Shanghai facility of a Chinese firm.
(B) Interests from his deposits in a local bank of foreign currency earned abroad converted to Philippine pesos.
(C) Dividends received from an American corporation which derived 60% of its annual gross receipts from Philippine sources for the past 7 years.
(D) Gains derived from the sale of his condominium unit located in The Fort, Taguig City to another resident alien.

**SUGGESTED ANSWER:**

(A) Consultancy fees received for designing a computer program and installing the same in the Shanghai facility of a Chinese firm.

**Income from the performance of services is treated as income from within the Philippines, if: (2012 BAR)**

**a) The payment of compensation for the service is made in the Philippines;**
**b) The contract calling for the performance of services is signed in the Philippines;**
**c) The service is actually performed in the Philippines;**
**d) The recipient of service income is a resident of the Philippines.**

**SUGGESTED ANSWER:**

c) The service is actually performed in the Philippines

Section 42, NIRC.

4. Types of Philippine income tax
5. Taxable period
   a) Calendar period

**An individual taxpayer can adopt either the calendar or fiscal period for purposes of filing his income tax return.**

**SUGGESTED ANSWER:**

FALSE. [Sec. 43, NIRC.]

b) Fiscal period

**An individual taxpayer can adopt either the calendar or fiscal period for purposes of filing his income tax return.**

**SUGGESTED ANSWER:**

FALSE. [Sec. 43, NIRC.]

c) Short period

**An individual taxpayer can adopt either the calendar or fiscal period for purposes of filing his income tax return. (2010 Bar Question)**

**SUGGESTED ANSWER:**

False. (Sec. 43, NIRC)

**Which among the following taxpayers is required to use only the calendar year for tax purposes? (2011 Bar Question)**

(A) Partnership exclusively for the design of government infrastructure projects considered as practice of civil engineering.
(B) Joint-stock company formed for the purpose of undertaking construction projects.
(C) Business partnership engaged in energy operations under a service contract with the government.
(D) Joint account (cuentas en participacion) engaged in the trading of mineral ores.

**SUGGESTED ANSWER:**

(A) Partnership exclusively for the design of government infrastructure projects considered as practice of civil engineering.

6. Kinds of taxpayers
    a) Individual taxpayers
        i. Citizens
        ii. Aliens

**Pierre de Savigny, a Frenchman, arrived in the Philippines on January 1, 2010 and continued to live and engage in business in the Philippines. He went on a tour of Southeast Asia from August 1 to November 5, 2010. He returned to the**

**Philippines on November 6, 2010 and stayed until April 15, 2011 when he returned to France. He earned during his stay in the Philippines a gross income of P3 million from his investments in the country. For the year 2010, Pierre's taxable status is that of: (2011 Bar Question)**

(A) a non-resident alien not engaged in trade or business in the Philippines.
(B) a non-resident alien engaged in trade or business in the Philippines.
(C) a resident alien not engaged in trade or business in the Philippines.
(D) a resident alien engaged in trade or business in the Philippines.

**SUGGESTED ANSWER:**

(B) a non-resident alien engaged in trade or business in the Philippines.

iii. Special class of individual employees
  a) Minimum wage earner

b) Corporations
  i. Domestic corporations
  ii. Foreign corporations

**A resident corporation is one that is: (2012 BAR)**
a) Organized under the laws of the Philippines that does business in another country;
b) Organized under the laws of a foreign country that sets up a regional headquarter in the Philippines doing product promotion and information dissemination;
c) Organized under the laws of the Philippines that engages business in a special economic zone;
d) Organized under the laws of a foreign country that engages in business in Makati City, Philippines.

**SUGGESTED ANSWER:**

d) Organized under the laws of a foreign country that engages in business in Makati City, Philippines
Section 22 (H), NIRC.

**Aplets Corporation is registered under the laws of the Virgin Islands. It has extensive operations in Southeast Asia. In the Philippines, Its products are imported and sold at a mark-up by its exclusive distributor, Kim's Trading, Inc. The BIR compiled a record of all the imports of Kim from Aplets and imposed a tax on Aplets net income derived from its exports to Kim. Is the BIR correct? (2011 Bar Question)**

(A) Yes. Aplets is a non-resident foreign corporation engaged in trade or business in the Philippines.

(B) No. The tax should have been computed on the basis of gross revenues and not net income.
(C) No. Aplets is a non-resident foreign corporation not engaged in trade or business in the Philippines.
(D) Yes. Aplets is doing business in the Philippines through its exclusive distributor Kim's Trading. Inc.

**SUGGESTED ANSWER:**

(C) No. Aplets is a non-resident foreign corporation not engaged in trade or business in the Philippine

iii. Joint venture and consortium
iv.

c) Partnerships
d) General professional partnerships

**A general professional partnership (GPP) is one: (2012 BAR)**

**a) That is registered as such with the Securities and Exchange Commission and the Bureau of Internal Revenue;**
**b) That is composed of individuals who exercise a common profession;**
**c) That exclusively derives income from the practice of the common profession;**
**d) That derives professional income and rental income from property owned by it.**

**SUGGESTED ANSWER:**

c) That exclusively derives income from the practice of the common profession
Section 26, NIRC.

[Note: The question is unfair because it gives an initial impression that the examiner is asking the statement which best characterizes a GPP but the real question is found after the enumeration of the choices which might not be not be noticed by the examinee.]

e) Estates and trusts

**Johnny transferred a valuable 10-door commercial apartment to a designated trustee, Miriam, naming in the trust instrument Santino, Johnny's 10-year old son, as the sole beneficiary. The trustee is instructed to distribute the yearly rentals amounting to P720,000.00. The trustee consults you if she has to pay the annual income tax on the rentals received from the commercial apartment.**

**What advice will you give the trustee? Explain. (3%)**

**SUGGESTED ANSWER:**

I will advise the trustee that she has nothing to pay in annual income taxes because the trust's taxable income is zero. This is so because the amount of income to be distributed annually to the beneficiary is a deduction from the gross income of the trust but must be reported as income of the beneficiary (Section 61(A), NIRC).

**[b] Will your advice be the same if the trustee is directed to accumulate the rental income and distribute the same only when the beneficiary reaches the age of majority? Why or why not? (3%)**

**SUGGESTED ANSWER:**

No, the trustee has to pay the income tax on the trust's net income determined annually if the income is required to be accumulated. Once a taxable trust is established , its net income is either taxable to the trust, represented by the trustee, or o the beneficiary depending on the provision for distribution of income following the one-layer taxation scheme (Section 61(A), NIRC). (BAR 2009)

f) Co-ownerships

7. Income taxation
    a. Definition
    b. Nature
    c. General principles

8. Income
    a. Definition
    b. Nature
    c. When income is taxable
        i. Existence of income
        ii. Realization of income

**Income is considered realized for tax purposes when: (2011 Bar Question)**

(A) it is recognized as revenue under accounting standards even if the law does not do so.
(B) the taxpayer retires from the business without approval from the BIR.
(C) the taxpayer has been paid and has received in cash or near cash the taxable income.
(D) the earning process is complete or virtually complete and an exchange has taken place.

**SUGGESTED ANSWER:**

(D) the earning process is complete or virtually complete and an exchange has taken place.

**Aleta sued Boboy for breach of promise to marry. Boboy lost the case and duly paid the court's award that included, among others, Pl00,000 as moral damages for the mental anguish Aleta suffered.**

**Did Aleta earn a taxable income? (1%)(2013 Bar Question)**

(A) She had a taxable income of P100,000 since income is income from whatever source.
(B) She had no taxable income because it was a donation.
(C) She had taxable income since she made a profit.
(D) She had no taxable income since moral damages are compensatory.

**SUGGESTED ANSWER:**

(D) She had no taxable income since moral damages are compensatory.
Exemplary and moral damages awarded to a party-litigant are not considered taxable income (America N.A.-Manila Branch vs. Commissioner of Internal Revenue, CTA Case No. 6144, March 14, 2005).

**Hopeful Corporation obtained a loan from Generous Bank and executed a mortgage on its real property to secure the loan. When Hopeful Corporation failed to pay the loan, Generous Bank extrajudicially foreclosed the mortgage on the property and acquired the same as the highest bidder. A month after the foreclosure, Hopeful Corporation exercised its right of redemption and was able to redeem the property. Is Generous Bank liable to pay capital gains tax as a result of the foreclosure sale? Explain. (2014 Bar Question)**

**SUGGESTED ANSWER :**

No. Since Hopeful Corporation exercised its right to redeem the property, Generous Bank is not liable to pay capital gains tax on the foreclosure sale. As stated in the analogous case of Supreme Transliner, Inc., v. BPI Family Savings Bank, Inc. (G.R. No. 165617, February 25, 2011, 644 SCRA 59), Rev. Regs. No. 4-99 expressly provides that if a mortgagor exercises his right of redemption within one year from the issuance of the certificate of sale, no capital gains tax shall be imposed because no sale or transfer of real property was realized. It is only in case of non-redemption by Hopeful Corporation that the obligation to pay capital gains tax arises, which shall be based on the bid price of the highest bidder. The tax will be imposed only upon the expiration of the one-year period of redemption. Furthermore, the obligation to pay the capital gains tax would primarily fall on the mortgagor, Hopeful Corporation, and not on Generous Bank.

iii. Recognition of income

**Mr. A was preparing his income tax return and had some doubt on whether a commission he earned should be declared for the current year or for the succeeding year. He sought the opinion of his lawyer who advised him to report the commission in the succeeding year. He heeded his lawyer's advice and reported the commission in the succeeding year. The lawyer's advice turned out to be wrong; in Mr. A's petition against the BIR assessment, the court ruled against Mr. A.**

**Is Mr. A guilty of fraud? (1%)(2013 Bar Question)**

(A) Mr. A is not guilty of fraud as he simply followed the advice of his lawyer.
(B) Mr. A is guilty of fraud; he deliberately did not report the commission in the current year when he should have done so.
(C) Mr. A's lawyer should pay the tax for giving the wrong advice.
(D) Mr. A is guilty for failing to consult his accountant.

**SUGGESTED ANSWER:**

(A) Mr. A is not guilty of fraud as he simply followed the advice of his lawyer.

In Santos v. People of the Philippines and BIR, the Court of Tax Appeals (CTA) acquitted Santos from the criminal case of tax evasion and ruled that failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts. Moreover, the CTA reiterated the doctrine in Yulivo Sons hardware v. Court of Tax Appeals (G.R. No. L- 13203), January 28, 1961, 1 SCRA 169) that mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.
In the present case, Mr. A relied in good faith on the expertise of his lawyer in not declaring his income for that year. Therefore, he is not guilty of fraud.

iv. Methods of accounting

**A corporation may change its taxable year to calendar or fiscal year in filing its annual income tax return, provided: (2011 Bar Question)**

(A) it seeks prior BIR approval of its proposed change in accounting period.
(B) it simultaneously seeks BIR approval of its new accounting period.
(C) it should change its accounting period two years prior to changing its taxable year.
(D) its constitution and by-laws authorizes the change.

**SUGGESTED ANSWER:**

(A) it seeks prior BIR approval of its proposed change in accounting period.

**The appropriate method of accounting for a contractor on his long-term construction contract (i.e., it takes more than a year to finish) is: (2012 BAR)**

a) Cash method;
b) Accrual method;
c) Installment sale method;
d) Percentage of completion method.

**SUGGESTED ANSWER:**

d) Percentage of completion method
Section 127, NIRC.

d. Tests in determining whether income is earned for tax purposes
   i. Realization test
   ii. Claim of right doctrine or doctrine of ownership, command, or control
   iii. Economic benefit test, doctrine of proprietary interest
   iv. Severance test
   v. All events test

**The "all events test" refers to: (2012 BAR)**

a) A person who uses the cash method where all sales have been fully paid by the buyers thereof;
b) A person who uses the installment sales method, where the full amount of consideration is paid in full by the buyer thereof within the year of sale;
c) A person who uses the accrual method, whereby an expense is deductible for the taxable year in which all the events had occurred which determined the fact of the liability and the amount thereof could be determined with reasonable accuracy;
d) A person who uses the completed method, whereby the construction project has been completed during the year the contract was signed.

**SUGGESTED ANSWER:**

c) A person who uses the accrual method, whereby an expense is deductible for the taxable year in which all the events had occurred which determined the fact of the liability and the amount thereof could be determined with reasonable accuracy.

The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay; (2) the availability of the reasonable accurate determination of such income or liability.

The all-events test requires the right to income or liability be fixed, and the amount of such income or liability be determined with reasonable accuracy. However, the test does not demand that the amount of income or liability be known absolutely, only that a taxpayer has at his disposal the information necessary to compute the amount with reasonable accuracy. The all- events test is satisfied where computation remains uncertain, if its basis is unchangeable; the test is satisfied where a computation may be

unknown, but is not as much as unknowable, within the taxable year. "The amount of liability does not have to be determined exactly; it must be determined with reasonable accuracy." (Commissioner of Internal Revenue vs. Isabela Cultural Corporation, G.R. No. 172231, February 12, 2007)

**YYY Corporation engaged the services of the Manananggol Law Firm in 2006 to defend the corporation's title over a property used in the business. For the legal services rendered in 2007, the law firm billed the corporation only in 2008. The corporation duly paid.**

**YYY Corporation claimed this expense as a deduction from gross income in its 2008 return, because the exact amount of the expense was determined only in 2008. Is YYY's claim of deduction proper? Reasons. (4%)**

**SUGGESTED ANSWER:**

No. The expense is deductible in the year it complies with the all-events test. The test is considered met if the liability is fixed, and the amount of such liability is determined with reasonable accuracy. The liability to pay is already fixed in 2007 when the services were rendered, and the amount of such liability is determinable with reasonable accuracy in the same year. Hence the deduction should have been claimed in 2007 and not in 2008. (CIR v. Isabela Cultural Corporation, SIS SCRA 556 [2007]). (BAR 2009)

9. Gross income
    a. Definition

    b. Concept of income from whatever source derived

**There is no taxable income until such income is recognized. Taxable income is recognized when the: (2011 Bar Question)**

(A) taxpayer fails to include the income in his income tax return.
(B) income has been actually received in money or its equivalent.
(C) income has been received, either actually or constructively.
(D) transaction that is the source of the income is consummated.

**SUGGESTED ANSWER:**

(C) income has been received, either actually or constructively.

**In 2010, Juliet Ulbod earned P500,000.00 as income from her beauty parlor and received P250,000.00 as Christmas gift from her spinster aunt. She had no other receipts for the year. She spent P150,000.00 for the operation of her beauty parlor. For tax purposes, her gross income for 2010 is: (2011 Bar Question)**

(A) P750,000.00.

(B) P500,000.00.
(C) P350,000.00.
(D) P600,000.00.

**SUGGESTED ANSWER:**

(B) P500,000.00.

**In 2010, Mr. Platon sent his sister Helen $1 ,000 via a telegraphic transfer through the Bank of PI. The bank's remittance clerk made a mistake and credited Helen with $1,000,000 which she promptly withdrew. The bank demanded the return of the mistakenly credited excess, but Helen refused. The BIR entered the picture and investigated Helen.**

**Would the BIR be correct if it determines that Helen earned taxable income under these facts? (1%) (2013 Bar Question)**

(A) No, she had no income because she had no right to the mistakenly credited funds.
(B) Yes, income is income regardless of the source.
(C) No, it was not her fault that the funds in excess of $1,000 were credited to her.
(D) No, the funds in excess of$1,000 were in effect donated to her.

**SUGGESTED ANSWER:**

(B) Yes, income is income regardless of the source.

Section 32 of the NIRC defines gross income as all income derived from whatever source. Consequently, the flow of wealth, without any distinction as to the lawfulness of its source, is subject to income tax. In other words, the phrase "income from whatever source" discloses a legislative policy to include all income not expressly exempted within the class of taxable income under the law.

c. Gross income vis-à-vis net income vis-à-vis taxable income

d. Classification of income as to source
    i. Gross income and taxable income from sources within the Philippines

    ii. Gross income and taxable income from sources without the Philippines
    iii. Income partly within or partly without the Philippines

e. Sources of income subject to tax
    i. Compensation income

**Mr. Gipit borrowed from Mr. Maunawain P100,000.00, payable in five (5) equal monthly installments. Before the first installment became due, Mr. Gipit rendered**

**general cleaning services in the entire office building of Mr. Maunawain, and as compensation therefor, Mr. Maunawain cancelled the indebtedness of Mr. Gipit up to the amount of P75,000.00. Mr. Gipit claims that the cancellation of his indebtedness cannot be considered as gain on his part which must be subject to income tax, because according to him, he did not actually receive payment from Mr. Maunawain for the general cleaning services. Is Mr. Gipit correct? Explain. (2014 Bar Question)**

**SUGGESTED ANSWER :**

No. Section 50 of Rev. Regs. No. 2, otherwise known as Income Tax Regulations, provides that if a debtor performs services for a creditor who cancels the debt in consideration for such services, the debtor realizes income to that amount as compensation for his services. In the given problem, the cancellation of Mr. Gipit's indebtedness up to the amount of Php 75,000.00 gave rise to compensation income subject to income tax, since Mr. Maunawain condoned such amount as consideration for the general cleaning services rendered by Mr. Gipit.

ii. Fringe benefits

**PRT Corp. purchased a residential house and lot with a swimming pool in an upscale subdivision and required the company president to stay there without paying rent; it reasoned out that the company president must maintain a certain image and be able to entertain guests at the house to promote the company's business. The company president declared that because they are childless, he and his wife could very well live in a smaller house.**

**Was there a taxable fringe benefit? (1%) (2013 Bar Question)**

(A) There was no taxable fringe benefit since it was for the convenience of the employer and was necessary for its business.
(B) There was a taxable fringe benefit since the stay at the house was for free.
(C) There was a taxable fringe benefit because the house was very luxurious.
(D) There was no taxable fringe benefit because the company president was only required to stay there and did not demand free housing.

**SUGGESTED ANSWER:**

(B) There was a taxable fringe benefit since the stay at the house was for free.

First, the company president is not a rank-and-file employee. Thus, the housing benefit is subject to fringe benefits tax pursuant to Section 33 of the NIRC and Section 2.33 (A) of the RR No. 03- 98. Although the housing benefit to the President may be for the convenience of the employer (PRT Corp.) or necessary to its business, still, it also inured to the benefit of the President as his stay therein is for free. RR No. 03-98 also provides for the guidelines and valuation of fringe benefits for purposes of computing

the portion which shall be subject to fringe benefits tax in cases where the fringe benefits entail joint benefits to the employer and employee.

Thus, there was a taxable fringe benefit.

iii. Professional income

iv. Income from business

v. Income from dealings in property

**Income from dealings in property (real, personal, or mixed) is the gain or loss derived: (2011 Bar Question)**

(A) only from the cash sales of property.
(B) from cash and gratuitous receipts of property.
(C) from sale and lease of property.
(D) only from the sale of property.

**SUGGESTED ANSWER:**

(D) only from the sale of property.

a. Types of properties

**Mr. Pedro Aguirre, a resident citizen, is working for a large real estate development company in the country and in 2010, he was promoted to Vice-President of the company. With more responsibilities comes higher pay. In 2011, he decided to buy a new car worth P2 Million and he traded-in his old car with a market value of P800,000.00 and paid the difference of P1.2 Million to the car company. The old car, which was bought three (3) years ago by the father of Mr. Pedro Aguirre at price of P700,000.00 was donated by him and registered in the name of his son. The corresponding donor's tax thereon was duly paid by the father. (2012 BAR)**

**a. How much is the cost basis of the old car to Mr. Aguirre? Explain your answer**
**b. What is the nature of the old car – capital asset or ordinary asset? Explain your answer.**
**c. Is Mr. Aguirre liable to pay income tax on the gain from the sale of his old car? Explain your answer.**

**Suggested Answer:**

*a.* P700,000. The basis of the property in the hands of the donee is the carry-over basis *(Sec. 40(B)(3), NIRC).*

*b.* The old car is a capital asset. It is property held by the taxpayer, but is not stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property

held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation; or real property used in trade or business of the taxpayer *(Sec. 39, NIRC).*

*c.* YES. Capital gain is P100,000. The amount of the taxable gain is subject to the holding period of the asset *(Sec. 39,NIRC).*

**Income from dealings in property (real, personal, or mixed) is the gain or loss derived: (2011 Bar Question)**

(A) only from the cash sales of property.
(B) from cash and gratuitous receipts of property.
(C) from sale and lease of property.
(D) only from the sale of property.

**SUGGESTED ANSWER:**

(D) only from the sale of property.

1. Ordinary assets
2. Capital assets

b. Types of gains from dealings in property

**Income from dealings in property (real, personal, or mixed) is the gain or loss derived: (2011 Bar Question)**

(A) only from the cash sales of property.
(B) from cash and gratuitous receipts of property.
(C) from sale and lease of property.
(D) only from the sale of property.

**SUGGESTED ANSWER:**

(D) only from the sale of property.

1. Ordinary income vis-à-vis capital gain

**An individual, who is a real estate dealer, sold a residential lot in Quezon City at a gain of P100,000.00 (selling price of P900,000.00 and cost is P800,00.00). The sale is subject to income tax as follows: (2012 BAR)**

a) 6% capital gains tax on the gain;
b) 6% capital gains tax on the gross selling price of fair market value, whichever is higher;
c) Ordinary income tax at the graduated rates of 5% to 32% of net taxable income;

d) 30% income tax on net taxable income.

**SUGGESTED ANSWER:**

c) Ordinary income tax at the graduated rates of 5% to 32% of net taxable income Section 24, NIRC.

2. Actual gain vis-à-vis presumed gain
3. Long term capital gain vis-à-vis short-term capital gain
4. Net capital gain, net capital loss
5. Computation of the amount of gain or loss
6. Income tax treatment of capital loss
   a. Capital loss limitation rule (applicable to both corporations and individuals)

**Mirador, Inc., a domestic corporation, filed its Annual Income Tax Return for its taxable year 2008 on April 15, 2009. In the Return, it reflected an income tax overpayment of PI,000,000.00 and indicated its choice to carry-over the overpayment as an automatic tax credit against its income tax liabilities in subsequent years.**

**On April 15,2010, it filed its Annual Income Tax Return for its taxable year 2009 reflecting a taxable loss and an income tax overpayment for the current year 2009 in the amount of P500,000.00 and its income tax overpayment for the prior year 2008 of PI ,000,000.00.**

**In its 2009 Return, the corporation indicated its option to claim for refund the total income tax overpayment of P1,500,000.00**

**Choose which of the following statements is correct.**

**A. Mirador, Inc. may claim as refund the total income tax overpayment of P1,500,000.00 reflected in its income tax return for its taxable year 2009;**
**B. It may claim as refund the amount of P500,000.00 representing its income tax overpayment for its taxable year 2009; or**
**C. No amount may be claimed as refund. Explain the basis of your answer. (5%)**

**ANSWER:**

It may claim as refund the amount of P500,000 representing its income tax overpayment for its taxable year 2009.

   b. Net loss carry-over rule (applicable only to individuals)

**In March 2009, Tonette, who is fond of jewelries, bought a diamond ring for P750,000.00, a bracelet for P250,000.00, a necklace for P500,000.00, and a brooch for P500,000.00. Tonette derives income from the exercise of her profession as a licensed CPA. In October 2009, Tonette sold her diamond ring, bracelet, and necklace for only P1.25 million incurring a loss of P250,000.00. She used the P1.25 million to buy a solo diamond ring in November 2009 which she sold for P1.5 million in September 2010. Tonette had no other transaction in jewelry in 2010. Which among the following describes the tax implications arising from the above transactions? (2011 Bar Question)**

**(A) Tonette may deduct his 2009 loss only from her 2009 professional income.**
**(B) Tonette may carry over and deduct her 2009 loss only from her 2010 gain.**
**(C) Tonette may carry over and deduct her 2009 loss from her 2010 professional income as well as from her gain.**
**(D) Tonette may not deduct her 2009 loss from both her 2010 professional income and her gain.**

**SUGGESTED ANSWER:**

(B) Tonette may carry over and deduct her 2009 loss only from her 2010 gain.

7. Dealings in real property situated in the Philippines

8. Dealings in shares of stock of Philippine corporations
    a. Shares listed and traded in the stock exchange
    b. Shares not listed and traded in the stock exchange

**Federico, a Filipino citizen, migrated to the United States some six years ago and got a permanent resident status or green card. He should pay his Philippine income taxes on: (2011 Bar Question)**

**(A) the gains derived from the sale in California, U.S.A. of jewelry he purchased in the Philippines.**
**(B) the proceeds he received from a Philippine insurance company as the sole beneficiary of life insurance taken by his father who died recently.**
**(C) the gains derived from the sale in the New York Stock Exchange of shares of stock in PLDT, a Philippine corporation.**
**(D) dividends received from a two year old foreign corporation whose gross income was derived solely from Philippine sources.**

**SUGGESTED ANSWER:**

(C) the gains derived from the sale in the New York Stock Exchange of shares of stock in PLDT, a Philippine corporation.

**Keyrand, Inc., a Philippine corporation, sold through the local stock exchange 10,000 PLDT shares that it bought 2 years ago. Keyrand sold the shares for P2 million and realized a net gain of P200,000.00. How shall it pay tax on the transaction? (2011 Bar Question)**

**(A) It shall declare a P2 million gross income in its income tax return, deducting its cost of acquisition as an expense.**
**(B) It shall report the P200,000.00 in its corporate income tax return adjusted by the holding period.**
**(C) It shall pay 5% tax on the first P100,000.00 of the P200,000.00 and 10% tax on the remaining P100,000.00.**
**(D) It shall pay a tax of one-half of 1% of the P2 million gross sales.**

**SUGGESTED ANSWER:**

(D) It shall pay a tax of one-half of 1% of the P2 million gross sales.

**In 2006, Mr. Vicente Tagle, a retiree, bought 10,000 CDA shares that are unlisted in the local stock exchange for P10 per share. In 2010, the said shares had a book value per share of P60 per share. In view of a car accident in 2010, Mr. Vicente Tagle had to sell his CDA shares but he could sell the same only for P50 per share. The sale is subject to tax as follows: (2012 BAR)**

**a) 5%/10% capital gains tax on the capital gain from sale of P40 per share (P50 selling price less P10 cost);**
**b) 5%/10% capital gains tax on the capital gain of P50 per share, arrived at by deducting the cost (P10 per share) from the book value (P60 per share);**
**c) 5%/10% capital gains tax on the capital gain from sale of P40 per share (P50 selling price less P10 cost) plus donor's tax on the excess of the fair market value of the shares over the consideration;**
**d) Graduated income tax rates of 5% to 32% on the net taxable income from the sale of the shares.**

**SUGGESTED ANSWER:**

c) 5%/10% capital gains tax on the capital gain from sale of P40 per share (P50 selling price less P10 cost) plus donor's tax on the excess of the fair market value of the shares over the consideration
Section 24(C) in relation to Section 100, NIRC; RR No. 6-2008.

9. Sale of principal residence

**In 2000, Mr. Belen bought a residential house and lot for P1,000,000. He used the property as his and his family's principal residence. It is now year 2013 and he is thinking of selling the property to buy a new one. He seeks your advice on how much income tax he would pay if he sells the property. The total zonal value of**

**the property isP5,000,000 and the fair market value per the tax declaration is P2,500,000. He intends to sell it for P6,000,000.**

**What material considerations will you take into account in computing the income tax? Please explain the legal relevance of each of these considerations. (2013 Bar Question)**

**SUGGESTED ANSWER:**

In computing the capital gains tax, a final tax of six percent (6%) based on the gross selling price or current fair market value, whichever is higher, shall be imposed. In this case, the basis of the tax is P6,000,000.00, the gross selling price, being higher than P2,500,00.00, the fair market value of the residential house.

Nevertheless, if within thirty (30) days from the date of sale or disposition, Mr. Belen notifies the Commissioner that he intends to utilize the whole P6,000,000.00 in acquiring a new house within eighteen (18) calendar months from the sale, the gross selling price shall be exempt from the capital gains tax.

If Mr. Belen does not utilize the whole P6,000,000.00 in acquiring a new residence under the conditions above, the portion of the gain presumed to have been realized from the sale or disposition shall be subject to capital gains tax. For this purpose, P6,000,000.00 shall be multiplied by a fraction which the unutilized amount bears to the gross selling price in order to determine the taxable portion and the 6% capital gains tax shall be imposed thereon under Section 24(D) of the NIRC.

**Mr. H decided to sell the house and lot wherein he and his family have lived for the past 10 years, hoping to buy and move to a new house and lot closer to his children's school. Concerned about the capital gains tax that will be due on the sale of their house, Mr. H approaches you as a friend for advice if it is possible for the sale of their house to be exempted from capital gains tax and the conditions they must comply with to avail themselves of said exemption. How will you respond? (2015 Bar Question)**

**SUGGESTED ANSWER:**

Mr. H may avail the exemption from capital gains tax on sale of principal residence by natural persons. Under the law, the following are the requisites: (1) proceeds of the sale of the principal residence have been fully utilized in acquiring or constructing new principal residence within eighteen (18) calendar months from the date of sale or disposition; (2) The historical cost or adjusted basis of the real property sold or disposed will be carried over to the new principal residence built or acquired; (3) The Commissioner has been duly notified, through a prescribed return, within thirty (30) days from the date of sale or disposition of the person’s intention to avail of the tax exemption; and (4) Exemption was availed only once every ten (10) years.

vi. Passive investment income

a. Interest income

**Interest income of a domestic commercial bank derived from a peso loan to a domestic corporation in 2010 is: (2012 BAR)**

**a) Subject to the 30% income tax based on its net taxable income;**
**b) Subject to the 20% final withholding tax;**
**c) Subject to the 7.5% final withholding tax;**
**d) Subject to 10% final withholding tax.**

**SUGGESTED ANSWER:**

a) Subject to the 30% income tax based on its net taxable income
Section 27 (A).

b. Dividend income

**ABC Corp. was dissolved and liquidating dividends were declared and paid to the stockholders.**

**What tax consequence follows? (1%) (2013 Bar Question)**

**(A) ABC Corp. should deduct a final tax of 10% from the dividends.**
**(B) The stockholders should declare their gain from their investment and pay income tax at the ordinary rates.**
**(C) The dividends are exempt from tax.**
**(D) ABC Corp. should withhold a 10% creditable tax.**

**SUGGESTED ANSWER:**

(C) The dividends are exempt from tax.

Liquidating dividends are not income and are thus not subject to income tax.

In Wise & Co., Inc. v. Meer (G.R. No. 48231, June 30, 1947), the Supreme Court defined liquidating dividends as the dissolving corporation's payments to the stockholders for their surrender and relinquishment of interest in the dissolving corporation. They are generally a return of capital. Liquidating dividends are unlike cash and property dividends which are portions of corporate profits that are set aside for distribution to the stockholders in proportion to their subscription to the capital stock of the corporation.

**MGC Corp. secured an income tax holiday for 5 years as a pioneer industry. On the fourth year of the tax holiday, MGC Corp. declared and paid cash dividends to its stockholders, all of whom are individuals.**

**Are the dividends taxable? (1%) (2013 Bar Question)**

**(A) The dividends are taxable; the tax exemption of MGC Corp. does not extend to its stockholders.**
**(B) The dividends are tax exempt because of MGC Corp.'s income tax holiday.**
**(C) The dividends are taxable if they exceed 50% of MGC Corp.'s retained earnings.**
**(D) The dividends are exempt if paid before the end of MGC Corp.'s fiscal year.**

**SUGGESTED ANSWER:**

(A) The dividends are taxable; the tax exemption of MGC Corp. does not extend to its stockholders.

MGC Corp. and its stockholders are separate tax entities under the NIRC. Consequently, MGC Corp.'s tax exemption does not extend to its stockholders.

Under the NIRC, stockholders who receive dividends from a domestic corporation are subject to the following scheduler income tax rates: 10% for Filipino citizens and individual resident aliens; 20% for non-resident aliens engaged in trade or business; and 15% for non-resident foreign corporations. Thus, the stockholder's claim for the tax exemption is unmeritorious.

c. Royalty income
d. Rental income
    1. Lease of personal property
    2. Lease of real property
    3. Tax treatment of
        a. Leasehold improvements by lessee
        b. VAT added to rental/paid by the lessee

**In June 2013, DDD Corp., a domestic corporation engaged in the business of leasing real properties in the Philippines, entered into a lease agreement of a residential house and lot with EEE, Inc., a non-resident foreign corporation. The residential house and lot will be used by officials of EEE, Inc. during their visit to the Philippines. The lease agreement was signed by representatives from DDD Corp. and EEE, Inc. in Singapore. DDD Corp. did not subject the said lease to VAT believing that it was not a domestic service contract. Was DDD Corp. correct? Explain. (2015 Bar Question)**

**SUGGESTED ANSWER:**

DDD Corp. is not correct. Any person who, in the ordinary course of trade or business, leases properties, whether personal or real, shall be subject to value-added tax (VAT), except for unless the gross annual receipts of the lessor do not exceed P1,919,500.00

or that the monthly rental does not exceed P12,800, for residential units. Based on the destination principle, goods and services are taxed only in the country where they are consumed. Here , the services rendered to the officials of EEE are within the Philippines. Hence, DDD Corp. is subject to VAT.

c. Advance rental/long term lease

vii. Annuities, proceeds from life insurance or other types of insurance

viii. Prizes and awards

ix. Pensions, retirement benefit, or separation pay

**The Board of Directors of Sumo Corporation, a company primarily engaged in the business of marketing and distributing pest control products, approved the partial cessation of its commercial operations, resulting in the separation of 32 regular employees. Only half of the affected employees were notified of the board resolution.**

**Rule on the taxability of the separation pay and indemnity that will be received by the affected employees as the result of their separation from service. Explain your answer. (3%) (2017 BAR)**

**SUGGESTED ANSWER:**

It shall be tax-exempt. Section 32(B)(6)(b) of the NIRC, provides that any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall be exempt from taxation.

x. Income from any source whatever
   a. Forgiveness of indebtedness
   b. Recovery of accounts previously written-off – when taxable/when not taxable
   c. Receipt of tax refunds or credit
   d. Income from any source whatever
   e. Source rules in determining income from within and without
      1. Interests
      2. Dividends
      3. Services

**For income tax purposes, the source of the service income is important for the taxpayer, who is a: (2012 BAR)**

a) Filipino citizen residing in Makati City;

b) Non-resident Filipino citizen working residing in London, United Kingdom;
c) Japanese citizen who is married to a Filipino citizen and residing in their family home located Fort Bonifacio, Taguig City;
d) Domestic corporation.

**SUGGESTED ANSWER:**
b) Non-resident Filipino citizen working residing in London, United Kingdom
Section 23 in relation to Section 42, NIRC.

4. Rentals

**During the audit conducted by the BIR official, it was found that the rental income claimed by the corporation was not subjected to expanded withholding tax. Accordingly, the claimed rental expense: (2012 BAR)**

**a) Is deductible from the gross income of the corporation, despite non-withholding of income tax by the corporation;**
**b) Is deductible from the gross income of the corporation, provided that the 5% expanded withholding tax is paid by the corporation during the audit;**
**c) Is not deductible from gross income of the corporation due to non-withholding of tax;**
**d) Is deductible, if it can be shown that the lessor has correctly reported the rental income in his tax return.**

**SUGGESTED ANSWER:**

c) Is not deductible from gross income of the corporation due to non-withholding of tax;
Section 34(K), NIRC.
[Note: Percentage tax is outside of the coverage]

5. Royalties
6. Sale of real property
7. Sale of personal property

**Ms. C, a resident citizen, bought ready-to-wear goods from Ms. B, a nonresident citizen.**

**a) If the goods were produced from Ms. B's factory in the Philippines, is Ms. B's income from the sale to Ms. C taxable in the Philippines? Explain.**

**b) If Ms. B is an alien individual and the goods were produced in her factory in China, is Ms. B's income from the sale of the goods to Ms. C taxable in the Philippines? Explain. (2015 Bar Question)**

**SUGGESTED ANSWER:**

a. Yes, the income of Ms. B from the sale of ready-to-wear goods to Ms. C is taxable. A nonresident citizen is taxable only on income derived from sources within the Philippines. In line with the source rule of income taxation, since the goods are produced and sold within the Philippines, Ms. B's Philippine-sourced income is taxable in the Philippines.

b. Yes, but only a proportionate part of the income. Gains, profits and income from the sale of personal property produced by the taxpayer without and sold within the Philippines, shall be treated as derived partly from sources within and partly without the Philippines.

8. Shares of stock of domestic corporation

f. Exclusions from gross income

1. Rationale for the exclusions
2. Taxpayers who may avail of the exclusions
3. Exclusions distinguished from deductions and tax credit
4. Under the Constitution
    a. Income derived by the government or its political subdivisions from the exercise of any essential governmental function
5. Under the Tax Code
    a. Proceeds of life insurance policies
    b. Return of premium paid
    c. Amounts received under life insurance, endowment or annuity contracts

**True or False. Gains realized by the investor upon redemption of shares of stock in a mutual fund company are exempt from income tax. (2010 Bar Question)**

**SUGGESTED ANSWER:**

TRUE.

**The proceeds received under a life insurance endowment contract is NOT considered part of gross income: (2011 Bar Question)**

**(A) if it is so stated in the life insurance endowment policy.**
**(B) if the price for the endowment policy was not fully paid.**
**(C) where payment is made as a result of the death of the insured.**
**(D) where the beneficiary was not the one who took out the endowment contract.**

**SUGGESTED ANSWER:**

(C) where payment is made as a result of the death of the insured.

**All the items below are excluded from gross income, except: (2012 BAR)**
**a) Gain from sale of long-term bonds, debentures and indebtedness;**
**b) Value of property received by a person as donation or inheritance;**
**c) Retirement benefits received from the GSIS, SSS, or accredited retirement plan;**
**d) Separation pay received by a retiring employee under a voluntary retirement program of the corporate employer.**

**SUGGESTED ANSWER:**

d) Separation pay received by a retiring employee under a voluntary retirement program of the corporate employer.
Section 32(B)(6), NIRC.

d. Value of property acquired by gift, bequest, devise or descent
e. Amount received through accident or health insurance
f. Income exempt under tax treaty
g. Retirement benefits, pensions, gratuities, etc.
h. Winnings, prizes, and awards, including those in sports competition

**Mr. A, a citizen and resident of the Philippines, is a professional boxer. In a professional boxing match held in 2013, he won prize money in United States (US) dollars equivalent to P300,000,000.**

**a) Is the prize money paid to and received by Mr. A in the US taxable in the Philippines? Why?**
**b) May Mr. A's prize money qualify as an exclusion from his gross income? Why?**
**c) The US already imposed and withheld income taxes from Mr. A's prize money. How may Mr. A use or apply the income taxes he paid on his prize money to the US when he computes his income tax liability in the Philippines for 2013?** (2015 Bar Question)

**SUGGESTED ANSWER:**

a. Yes. Under the Tax Code, the income within and without of a resident citizen is taxable. Since Mr. A is a resident Filipino citizen, his income worldwide is taxable in the Philippines.

b. No. Under the law, all prizes and awards granted to athletes in local and international sports competitions whether held in the Philippines or abroad and sanctioned by their national sports association are excluded from gross income. However, in this case, there is no showing that the boxing match was sanctioned by the Philippine National Sports Commission. Therefore, the prize money is not excluded.

c. Mr. A may avail of tax credit against his tax liability in the Philippines for taxes paid in

foreign countries. He has to signify in his income tax return his desire to avail the deduction.

6. Under special laws
    a. Personal Equity and Retirement Account

g. Deductions from gross income

1. General rules
    a. Deductions must be paid or incurred in connection with the taxpayer's trade, business or profession

**Peter is the Vice-President for Sales of Golden Dragon Realty Conglomerate, Inc. (Golden Dragon). A group of five (5) foreign investors visited the country for possible investment in the condominium units and subdivision lots of Golden Dragon. After a tour of the properties for sale, the investors were wined and dined by Peter at the posh Conrad's Hotel at the cost of P l50,000.00. Afterward, the investors were brought to a party in a videoke club which cost the company P200,000.00 for food and drinks, and the amount of P80,000.00 as tips for business promotion officers. Expenses at Conrad's Hotel and the videoke club were receipted and submitted to support the deduction for representation and entertainment expenses. Decide if all the representation and entertainment expenses claimed by Golden Dragon are deductible. Explain. (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

Reasonable allowance for entertainment, amusement and recreation expenses during the taxable year that are directly connected or related to the operation or conduct of the trade, business or profession, or that are directly related to or in furtherance of the conduct of his/its trade business, or exercise of a profession not to exceed such ceilings prescribed by rules and regulations, are allowed as deduction from gross income.
In this case, the expenses incurred were to entertain the investors o Golden Dragon; thus, the amount deductible for entertainment, amusement and recreation expenses is limited to the actual amount paid or incurred but in no case shall the deduction exceed 0.50% of net sales for taxpayers engaged in the sale of goods or properties (Sec. 34(A) (1) (iv), NIRC as implemented by RR No.10-2002).

(Note: Reasonableness and liberality are recommended in considering examinee's answer to this question.]

**Calvin Dela Pisa was a Permits and Licensing Officer (rank-and-file) of Sta. Portia Realty Corporation (SPRC). He invited the Regional Director of the Housing and Land Use Regulatory Board (HLURB) to lunch at the Sulo Hotel in Quezon City to discuss the approval of SPRC's application for a development permit in connection with its subdivision development project in Pasig City. At breakfast**

**the following day, Calvin met a prospective client interested to enter into a joint venture with SPRC for the construction of a residential condominium unit in Cainta, Rizal.**

**Calvin incurred expenses for the lunch and breakfast meetings he had with the Regional Director of HLURB and the prospective client, respectively. The expenses were duly supported by official receipts issued in his name. At month's end, he requested the reimbursement of his expenses, and SPRC granted his request.**

**a. Can SPRC claim an allowable deduction for the expenses incurred by Calvin? Explain your answer. (2.5%)**

**b. Is the reimbursement received by Calvin from SPRC subject to tax? Explain your answer. (2.5%) (2017 BAR)**

**SUGGESTED ANSWER:**

a. SPRC cannot claim as a deduction, the amount spent for lunch in the meeting with the Regional Director of HLURB. While the expense is business connected, the same is not allowed as deduction because it was incurred as an indirect payment to a government official which, not only amounts to a violation of the Anti Graft and Corrupt Practices Act, but also constitutes bribes, kickbacks and similar payments. (See Sec 34 (a) (c) NIRC).

However, with respect to the amount spent for breakfast with a prospective client, the same is deductible from gross income of SPRC. The expense complies with the requirements for deductibility, namely: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) it must be supported by receipts, records or other pertinent papers. *(CIR v. General Foods (Phils.), Inc., G.R. No. 143672, April 24, 2003)*. Section 34 (A)(1)(b) of the 1997 NIRC, as amended, does not require that the substantiation be in the form of official receipts or invoices issued in the name of the taxpayer claiming the expense. It must only be proven that there is a "direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer".

b. No. Any amount paid as reimbursements for representation incurred by the employee in the performance of his duties is not compensation subject to withholding, if the following conditions are satisfied: (i) It is for ordinary and necessary representation expense paid or incurred by the employee in the pursuit of the trade, business or profession; and (ii) The employee is required to account/liquidate for the such expense in accordance with the specific requirements of substantiation pursuant to Sec. 34 of the 1997 NIRC, as amended. The amounts are actually spent by the employee for the benefit of his employer, so no income is considered to have flowed to the employee.

b. Deductions must be supported by adequate receipts or invoices (except standard deduction)
c. Additional requirement relating to withholding

2. Return of capital (cost of sales or services)
   a. Sale of inventory of goods by manufacturers and dealers of properties
   b. Sale of stock in trade by a real estate dealer and dealer in securities
   c. Sale of services
3. Itemized deductions
   a. Expenses
      1. Requisites for deductibility
         a. Nature: ordinary and necessary
         b. Paid and incurred during taxable year
         c. Others (not in the syllabus)
      2. Salaries, wages and other forms of compensation for personal services actually rendered, including the grossed-up monetary value of the fringe benefit subjected to fringe benefit tax which tax should have been paid
      3. Travelling/transportation expenses
      4. Cost of materials
      5. Rentals and/or other payments for use or possession of property

**Henry, a U.S. naturalized citizen, went home to the Philippines to reacquire Philippine citizenship under RA 9225. His mother left him a lot and building in Makati City and he wants to make use of it in his trading business. Considering that he needs money for the business, he wants to sell his lot and building and make use of the consideration. However, the lot has sentimental value and he wants to reacquire it in the future. A friend of Henry told him of the "sale-leaseback transaction" commonly used in the U.S., which is also used for tax reduction. Under said transaction, the lot owner sells his property to a buyer on the condition that he leases it back from the buyer. At the same time, the property owner is granted an option to repurchase the lot on or before an agreed date. Henry approaches you as a tax lawyer for advice.**

**Explain what tax benefits, if any, can be obtained by Henry and the buyer from the sale-leaseback transaction? (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

Henry will be entitled to claim rental expense as a deduction from his gross income in the trading business. His lease payments plus interest would be substantially higher than the depreciation expense he may claim in computing his taxable income; hence, the lease would result in the additional benefit of increasing his additional tax deductions. The buyer will be deriving rental income from the property and be able to

claim business deductions such as real property taxes, repairs and maintenance, depreciation and other expenses necessary for the renting out of the property.

6. Repairs and maintenance
7. Expenses under lease agreements
8. Expenses for professionals
9. Entertainment/Representation expenses
10. Political campaign expenses

**Political campaign contributions are NOT deductible from gross income: (2011 Bar Question)**

**(A) if they are not reported to the Commission on Elections.**
**(B) if the candidate supported wins the election because of possible corruption.**
**(C) since they do not help earn the income from which they are to be deducted.**
**(D) since such amounts are not considered as income of the candidate to whom given.**

**SUGGESTED ANSWER:**

(C) since they do not help earn the income from which they are to be deducted.

11. Training expenses
12. Advertising expenses

**Masarap Food Corporation (MFC) incurred substantial advertising expenses in order to protect its brand franchise for one of its line products. In its income tax return, MFC included the advertising expense s deduction from gross income, claiming it as an ordinary business expense. Is MFC correct? Explain. (3%)**

**SUGGESTED ANSWER:**

No. The protection of taxpayer's brand franchise is analogous to the maintenance of goodwill or title to one's property which is in the nature of a capital expenditure. An advertising expense, of such nature does not qualify as an ordinary business expense, because the benefit to be enjoyed by the taxpayer goes beyond one taxable year (CIR v. General Foods Inc., 401 SCRA 545 [2003]). (BAR 2009)

b. Interest
   1. Requisites for deductibility
   2. Non-deductible interest expense
   3. Interest subject to special rules
      a. Interest paid in advance
      b. Interest periodically amortized
      c. Interest expense incurred to acquire property for use in trade/business/profession

d. Reduction of interest expense/interest arbitrage

**The interest expense of a domestic corporation on a bank loan in connection with the purchase of a production equipment:** (2012 BAR)

**a) Is not deductible from gross income of the borrower-corporation;**
**b) Is deductible from the gross income of the borrower-corporation during the year or it may be capitalized as part of cost of the equipment;**
**c) Is deductible only for a period of five years from date of purchase;**
**d) Is deductible only if the taxpayer uses the cash method of accounting.**

**SUGGESTED ANSWER:**

b) Is deductible from the gross income of the borrower-corporation during the year or it may be capitalized as part of cost of the equipment.
Section 34(B)(3), NIRC.

c. Taxes
1. Requisites for deductibility
2. Non-deductible taxes
3. Treatments of surcharges/interests/fines for delinquency
4. Treatment of special assessment
5. Tax credit *vis-à-vis* deduction

**Congress issued a law allowing a 20% discount on the purchases of senior citizens from, among others, recreation centers. This 20% discount can then be used by the sellers as a "tax credit." At the initiative of BIR, however, Republic Act No. (RA) 9257 was enacted amending the treatment of the 20% discount as a "tax deduction." Equity Cinema filed a petition with the RTC claiming that RA 9257 is unconstitutional as it forcibly deprives sellers a part of the price without just compensation.**

**[a] What is the effect of converting the 20% discount from a "tax credit" to a "tax deduction"? (2.5%) (2016 BAR)**

**[b] If you are the judge, how will you decide the case? Briefly explain your answer. (2.5%) (2016 BAR)**

**SUGGESTED ANSWER:**

(A) The effect of converting the 20% discount from a "tax credit "tax deduction" is that the tax benefit enjoyed by sellers of goods and services to senior citizens is effectively reduced. A tax credit reduce the tax liability while a tax deduction merely reduces the tax base. Under the tax credit scheme, the establishments are paid back 100% of the discount they give to senior citizens while under the tax deduction scheme, they are only paid back about 32% of the 20% discount granted to senior citizens.

(B) I will decide in favor of the Constitutionality of the law. The discount as well as the tax deduction scheme is a valid exercise police power of the State (Manila Memorial Park Inc. V. Department of Social Welfare and Development, G.R. No.175356, December 3, 2013, 711 SCRA 102).

d. Losses
   1. Requisites for deductibility

**A is a travelling salesman working full time for Nu Skin Products. He receives a monthly salary plus 3% commission on his sales in a Southern province where he is based. He regularly uses his own car to maximize his visits even to far flung areas. One fine day a group of militants seized his car. He was notified the following day by the police that the marines and the militants had a bloody encounter and his car was completely destroyed after a grenade hit it.**

**A wants to file a claim for casualty loss. Explain the legal basis of your tax advice.** (2010 Bar Question)

**SUGGESTED ANSWER:**

A is not entitled to claim a casualty loss because all of his income partake the nature of compensation income. Taxpayers earning compensation income arising from personal services under an employer-employee relationship are not allowed to claim deduction except those allowed under Sec. 34(M) of the Tax Code referring only to Php 2,400 health and hospitalization insurance premiums. Therefore, the claim of casualty loss has no legal basis.

2. Other types of losses
   a. Capital losses
   b. Securities becoming worthless
c. Losses on wash sales of stocks or securities
d. Wagering losses
e. Net Operating Loss Carry-Over (NOLCO)

e. Bad debts
   1. Requisites for deductibility

**Rakham operates the lending company that made a loan to Alfonso in the amount of Php 120,000.00 subject of a promissory note which due within one (1) year from the note’s issuance. Three years after the loan became due and upon information that Alfonso is nowhere to be found, Rakham asks you for advice on how to treat the obligation as “bad debt”. Discuss the requisites for deductibility of a “bad debt?” (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

I will advise Rakham that the obligation of Alfonso may now be considered as bad debts for having met the yardstick of a debt which had become worthless. In order be considered worthless, the taxpayer should establish that during the year for which the deduction is sought, a situation developed as a result of which it became evident in the exercise of sound, objective business judgment that there remained no practical, but only vaguely theoretical, prospect that the debt would ever be paid (*Collector of Internal Revenue v. Goodrich International Rubber Co., 21 SCRA 1336 [1967*). A bad debt is deductible if it complies with the following requisites:

1. There must be valid and subsisting debt;
2. The obligation is connected with the taxpayer's trade or business, and is not between related parties;
3. There is an actual ascertainment that the debt is worthless; and
4. The debt is charged-off within the taxable year. A partial write-off is not allowed. *(PRC v. CA,G.R. No. 118794, May 8, 1996, 256 SCRA 667)*

2. Effect of recovery of bad debts

f. Depreciation
   1. Requisites for deductibility
   2. Methods of computing depreciation allowance
   a. Straight-line method
   b. Declining-balance method
   c. Sum-of-the-years-digit method

g. Charitable and other contributions
   1. Requisites for deductibility

**Dr. Taimtim is an alumnus of the College of Medicine of Universal University (UU), a privately- owned center for learning which grants yearly dividends to its stockholders.**

**UU has a famous chapel located within the campus where the old folks used to say that anyone who wanted to pass the medical board examinations should offer a dozen roses on all the Sundays of October. This was what Dr. Taimtim did when he was still reviewing for the board examinations. In his case, the folk saying proved to be true because he is now a successful cardiologist. Wanting to give back to the chapel and help defray the costs of its maintenance, Dr. Taimtim donated P50,000.00 to the caretakers of the chapel which was evidenced by an acknowledgment receipt.**

**In computing his net taxable income, can Dr. Taimtim use his donation to the chapel as an allowable deduction from his gross income under the National Internal Revenue Code (NIRC)?**

**SUGGESTED ANSWER :**

No. the donation is not deductible. The chapel is owned by a privately-owned university hence, the donation for the maintenance of the chapel is a donation to the university. The donation to be deductible must comply with the requirement that the net income of the done must not inure to the benefit of any private stockholder or individual. In the instant case, the university is granting yearly dividends to its stock holders which is a clear violation of the law appertaining to the so-called "private inurement doctrine" thereby making the donation non-deductible (*Section 34(H)(1), NIRC).*

2. Amount that may be deducted

h. Contributions to pension trusts
    1. Requisites for deductibility
i. Deductions under special laws

4. Optional standard deduction
    a. Individuals, except non-resident aliens

**In 2012, Dr. K decided to return to his hometown to start his own practice. At the end of 2012, Dr. K found that he earned gross professional income in the amount of P1,000,000.00; while he incurred expenses amounting to P560,000.00 constituting mostly of his office space rent, utilities, and miscellaneous expenses related to his medical practice. However, to Dr. K's dismay, only P320,000.00 of his expenses were duly covered by receipts. What are the options available for Dr. K so he could maximize the deductions from his gross income?** (2015 Bar Question)

**SUGGESTED ANSWER:**

Dr. K may opt to use the optional standard deduction (OSD) in lieu of the itemized deduction. OSD is a maximum of forty percent (40%) of gross receipts during the taxable year. Proof of actual expenses is not required, but Dr. K shall keep such records pertaining to his gross receipts.

**Ernesto, a Filipino citizen and a practicing lawyer, filed his income tax return for 2007 claiming optional standard deductions. Realizing that he has enough documents to substantiate his profession-connected expenses, he now plans to file an amended income tax return for 2007, in order to claim itemized deductions, since no audit has been commenced by the BIR on the return he previously filed. Will Ernesto be allowed to amend his return? Why or why not? (4%)**

**SUGGESTED ANSWER:**

No. Since Ernesto has elected to claim the optional standard deduction, said election is irrevocable for the taxable year for which the return is made (Section 34(L), NIRC). (BAR 2009)

b. Corporations, except non-resident foreign corporations

**True or False. A corporation can claim the optional standard deduction equivalent to 40% of its gross sales or receipts, as the case may be.** (2010 Bar Question)

**SUGGESTED ANSWER:**

FALSE. The OSD should not exceed 40% of its gross income.

c. Partnerships

5. Personal and additional exemption (R.A. No. 9504, Minimum Wage Earner Law)

a. Basic personal exemptions

b. Additional exemptions for taxpayer with dependents

**Spouses Pablo Gonzales and Teresita Gonzales, both resident citizens acquire during their marriage a residential house and lot located in Makati City, which is being leased to a tenant for a monthly rental of P100,000.00. Mr. Pablo Gonzales is the President of PG Corporation and he receives P50,000.00 salary per month. The spouses have only one (1) minor child. In late June 2010, he was immediately brought to the hospital because of the heart attack and he was pronounced dead on June 30, 2010. With no liabilities, the estate of the late Pablo Gonzales was settled extra-judicially in early 2011. (2012 BAR)**

**a. Is Mr. Pablo Gonzales required to file income tax for 2010? If so, how much income must he declare for the year? How much personal and additional exemption is he entitled to? Explain your answer.**
**b. Is Mrs. Teresita Gonzales required to file income tax return for 2010? If so, how much income must she declare for the year? How much personal exemption is she entitled to? Explain your answer.**
**c. Is the Estate of the late Pablo Gonzales required to file income tax return for 2010? If so, how much income must it declare for the year? How much personal exemption is it entitled to? Explain your answer.**

**Suggested Answer:**

a. YES. Income to be declared: P600,000 (Rental Income P300,000 and Salary P300,000); Personal and Additional Exemption P75,000 (Basic of P50,000 and P25,000 for one minor child)
b. YES. Rental Income P600,000 (P300,000 share for January to June 2010 and P300,000 representing his interest in the income from the properties comprising the estate for the period July to December). The share of the minor child in the rental

income (P300,000) earned after death is not included in the return of the parent pursuant to Sec. 51(E) of the Tax Code.

c. NO. **It has acquired no tax personality because the estate is not under judicial settlement**. The income of the properties is taxable to the heirs in their individual capacity in accordance with their representative interest in the inheritance.

**Dondon and Helena were legally separated. They had six minor children, all qualified to be claimed as additional exemptions for income tax purposes. The court awarded custody of two of the children to Dondon and three to Helena, with Dondon directed to provide full financial support for them as well. The court awarded the 6th child to Dondon's father with Dondon also providing full financial support. Assuming that only Dondon is gainfully employed while Helena is not, for how many children could Dondon claim additional exemptions when he files his income tax return?** (2011 Bar Question)

(A) Six children.
(B) Five children.
(C) Three children.
(D) Two children.

**SUGGESTED ANSWER:**

(D) Two children.

**Premium payment for health insurance of an individual who is an employee in an amount of P2,500 per year may be deducted from gross income if his gross salary per year is not more than P250,000.**(2010 Bar Question)

**SUGGESTED ANSWER:**

False. (Sec. 34(M), NIRC)

c. Status-at-the-end-of-the-year rule

d. Exemptions claimed by non-resident aliens

**True or False. A non-resident alien who stays in the Philippines for less than 180 days during the calendar year shall be entitled to personal exemption not to exceed the amount allowed to citizens of the Philippines by the country of which he is subject or citizen.** (2010 Bar Question)

**SUGGESTED ANSWER:**

False. [Sec. 25(A)(1) in relation to Sec. 35, NIRC]

**A non-resident alien who stays in the Philippines for less than 180 days during the calendar year shall be entitled to personal exemption not to exceed the amount allowed to citizens of the Philippines by the country of which he is subject or citizen.**

**SUGGESTED ANSWER:**

FALSE. [Sec. 25(A)(1) in relation to Sec. 35, NIRC.)

6. Items not deductible
   a. General rules
   b. Personal, living or family expenses
   c. Amount paid for new buildings or for permanent improvements (capital expenditures)
   d. Amount expended in restoring property (major repairs)
   e. Premiums paid on life insurance policy covering life or any other officer or employee financially interested
   f. Interest expense, bad debts, and losses from sales of property between related parties
   g. Losses from sales or exchange or property
   h. Non-deductible interest
   i. Non–deductible taxes
   j. Non-deductible losses
   k. Losses from wash sales of stock or securities

7. Exempt corporations
   a. Propriety educational institutions and hospitals

**The head priest of the religious sect Tres Personas Solo Dios, as the corporation sole, rented out a 5,000 sq. m. lot registered in its name for use as school site of a school organized for profit. The sect used the rentals for the support and upkeep of its priests. The rented lot is:** (2011 Bar Question)

**(A) not exempt from real property taxes because the user is organized for profit.**
**(B) exempt from real property taxes since it is actually, directly, and exclusively used for religious purposes.**
**(C) not exempt from real property taxes since it is the rents, not the land, that is used for religious purposes.**
**(D) exempt from real property taxes since it is actually, directly, and exclusively used for educational purposes.**

**SUGGESTED ANSWER:**

(D) exempt from real property taxes since it is actually, directly, and exclusively used for educational purposes.

b. Government-owned or controlled corporations
c. Others

10. Taxation of resident citizens, non-resident citizens, and resident aliens
    a. General rule that resident citizens are taxable on income from all sources within and without the Philippines

**Patrick is a successful businessman in the United States and he is a sole proprietor of a supermarket which has a gross sales of $10 million and an annual income of $3 million. He went to the Philippines on a visit and, in a party, he saw Atty. Agaton who boasts of being a tax expert. Patrick asks Atty. Agaton: if he (Patrick) decides to reacquire his Philippine citizenship under RA 9225, establish residence in this country, and open a supermarket in Makati City, will the BIR tax him on the income he earns from his U.S. business? If you were Atty. Agaton, what advice will you give Patrick? (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

I will advise Patrick that once he re-acquires his Philippine citizenship and establishes his residence in this country, his income tax classification would then be a 'resident citizen'. A resident citizen is taxable on all his - income, whether derived within or without the Philippines; accordingly, the income he earns from his business abroad will now be subject to the Philippine income tax (Sec. 23, NIRC).

**ALTERNATIVE ANSWER:**

if Patrick becomes a dual citizen under RA 9225 in our country, he shall be allowed to acquire real properties and engage himself in business here just like an ordinary Filipino without renouncing his foreign citizenship. In addition, his income abroad will not be taxed here. These are among the incentives we have extended to former Filipinos under the Dual Citizenship Law so that they will be encouraged to come home and invest their money in our country.

i. Non-resident citizens

b. Taxation on compensation income
   i. Inclusions
      a. Monetary compensation
         1. Regular salary/wage
         2. Separation pay/retirement benefit not otherwise exempt
         3. Bonuses, 13th month pay, and other benefits not exempt
         4. Director's fees
      b. Non-monetary compensation
         1. Fringe benefit not subject to tax

ii. Exclusions

a. Fringe benefit subject to tax

b. *De minimis* benefits

**Mapagbigay Corporation grants all its employees (rank and file, supervisors, and managers) 5% discount of the purchase price of its products. During an audit investigation, the BIR assessed the company the corresponding tax on the amount equivalent to the courtesy discount received by all the employees, contending that the courtesy discount is considered as additional compensation for the rank and file employees and additional fringe benefit for the supervisors and managers. In its defense, the company argues that the discount given to the rank and file employees is a *de minimis* benefit and not subject to tax. As to its managerial employees, it contends that the discount is nothing more than a privilege and its availment is restricted.**

**Is the BIR assessment correct? Explain. (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

No. The courtesy discounts given to rank and file employees are considered "de minimis benefits" falling under the category of other facilities and privileges furnished or offered by an employer to his employees which are of relatively small value intended to promote the health, goodwill, contentment or efficiency of the employee. These benefits are not considered a compensation subject to income tax and consequently to the withholding tax (Sec.2.781 of RR No. 10-2008). If these "de minimis benefits" are furnished to supervisors and managers the same are also exempt from the fringe benefits tax (RR No. 3-98; Sec. 33, NIRC).

**ALTERNATIVE ANSWER:**

Yes, the BIR assessment is correct. De minimis benefits are benefits of relatively small values provided by the employers to the employee on top of the basic compensation intended for the general welfare of the employees. It is considered exempt from income tax on compensation as well as from fringe benefit tax, provided it does not exceed P10,000 per employee per taxable year.

Pursuant to RR No. 1-2015, which amended RR No. 2-98, 3-98, 5-2008, 5-2011 and 8-2012, the following are considered de minimis benefits:

a) Monetized unused vacation leave credits of private employees not exceeding10 days during the year;
b) Monetized value of vacation and sick leave credits paid to government officials and employees
c) Medical cash allowance to dependents of employees, not exceeding Php750 per employee per semester or Php125 per month.

d) Rice subsidy of Php1,500
e) Uniform and clothing allowance not exceeding Php5,000 per annum
f) Actual medical assistance not exceeding Php10,000 per annum
g) Laundry allowance not exceeding Php300 per month
h) Employees' achievement awards, e.g. for length of service or safety achievement, which must be in the form of tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding Php10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees.
i) Gifts made during Christmas and major anniversary celebrations not exceeding Php5,000 per employee per annum
j) Daily meal allowance for overtime work and night/graveyard shift not exceeding twenty-five percent (25%) of the basic minimum wage on a per region basis
k) Benefits received by an employee by virtue of a collective bargaining agreement and productivity incentive schemes provided that the total monetary value received from both CM and productive incentive schemes combined do not exceed Php10,000 per employee per taxable year

This fist is exclusive and anything that is given which is not on the list, shall not be considered de minimis. The 5% discount of purchase price of its products, not being in this enumeration, is subject to tax as well as to withholding tax on compensation.

**Which of the following is an exclusion from gross income?** (2014 Bar Question)

**(A) Salaries and wages**
**(B) Cash dividends**
**(C) Liquidating dividends after dissolution of a corporation**
**(D) De minimis benefits**
**(E) Embezzled money**

**SUGGESTED ANSWER :**

D. *De minimis* benefits

**What are *de minimis* benefits and how are these taxed? Give three (3) examples of *de minimis* benefits.** (2015 Bar Question)

**SUGGESTED ANSWER:**

De minimis benefits are facilities, and privileges furnished or offered by an employer to his employees, which are not considered as compensation subject to income tax and consequently to withholding tax, if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as means of promoting the health, goodwill, contentment, or efficiency of his employees.

The excess over the de minimis limit prescribed shall be considered, along with the

"other benefits" under Section 32(B)(7)(e)(iv), NIRC, in determining whether or not the P82,000 threshold has been exceeded. Any excess over the de minimis ceiling may be exempt if it is covered by the unused portion of the P82,000.00 non-taxable "other benefits". Otherwise, any amount in excess of the P82,000.00 threshold becomes subject to tax.

The following shall be considered as "de minimis" benefits:

1. Monetized unused vacation leave credits of private employees not exceeding 10 days during the year;
2. Monetized unused vacation and sick leave credits paid to government officials and employees, regardless of the number of days;
3. Medical cash allowance to dependents of employees, not exceeding P750 per employee per semester or P125 per month;
4. Rice subsidy of P1,500 or one (1) sack of 50 kg. rice per month amounting to not more than P1,500;
5. Uniform and clothing allowance not exceeding P5,000 per annum;
6. Actual medical assistance not exceeding P10,000 per annum;
7. Laundry allowance not exceeding P300 per month;
8. Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding P10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;
9. Gifts given during Christmas and major anniversary celebrations not exceeding P50,000 per employee per annum;
10. Daily meal allowance for overtime work and night/graveyard shift not exceeding 25% of the basic minimum wage on a per region basis;
11. Benefits received by an employee by virtue of a collective bargaining agreement (CBA) and productivity incentive schemes provided that the total annual monetary value received from both CBA and productivity incentive schemes combined do not exceed ten thousand pesos (P10,000.00) per employee per taxable year

**Philippine National Railways (PNR) operates the rail transport of passengers and goods by providing train stations and freight customer facilities from Tutuban, Manila to the Bicol Province. As the operator of the railroad transit, PNR administers the land, improvements and equipment within its main station in Tutuban, Manila.**

**Invoking Section 193 of the Local Government Code (LGC) expressly withdrawing the tax exemption privileges of government-owned and controlled corporations upon the effectivity of the Code in 1992, the City Government of Manila issued Final Notices of Real Estate Tax Deficiency in the amount of P624,000,000.00 for the taxable years 2006 to 2010. On the other hand, PNR, seeking refuge under the**

**principle that the government cannot tax itself, insisted that the PNR lands and buildings are owned by the Republic.**

**Is the PNR exempt from real property tax? Explain your answer. (5%) (2016 BAR)**

***SUGGESTED ANSWER:***

No. The courtesy discounts given to rank and file employees are considered “de minimis benefits” falling under the category of other facilities and privileges furnished or offered by an employer to his employees which are of relatively small value intended to promote the health, goodwill, contentment or efficiency of the employee. These benefits are not considered as compensation subject to income tax and consequently to the withholding tax (Sec.2.78.1′ of RR No. 10-2008). If these “de minimis benefits” are furnished to supervisors and managers, the same are also exempt from the fringe benefits tax (RR No. 3-98; Sec. 33, NIRC).

***ALTERNATIVE ANSWER***

Yes, the BIR assessment is correct. De minimis benefits are benefits of relatively small values provided by the employers to the employee on top of the basic compensation intended for the general welfare of the employees. It is considered exempt from income tax on compensation as well as from fringe benefit tax, provided it does not exceed P10,000 per employee pertaxable year.

Pursuant to RR No. 1-2015, which amended RR No. 2-98, 3-98, 5-2008, 5-2011 and 8-2012, the following are considered de minimis benefits:

a) Monetized unused vacation leave credits of private employees notexceeding 10 days during the year;
b) Monetized value of vacation and sick leave credits paid to government officials and employees
c) Medical cash allowance to dependents of employees, not exceeding Php750 per employee per semester or Php125 per month.
d) Rice subsidy of Php1,500
e) Uniform and clothing allowance not exceeding Php5,000 per annum
f) Actual medical assistance not exceeding Php10,000 per annum
g) Laundry allowance not exceeding Php300 per month
h) Employees’ achievement awards, e.g. for length of service or safety achievement, which must be in the form of tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding Php10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees.
i) Gifts made during Christmas and major anniversary celebrations not exceeding Php5,000 per employee per annum
j) Daily meal allowance for overtime work and night/graveyard shift not exceeding twenty-five percent (25%) of the basic minimum wage on a per region basis

k) Benefits received by an employee by virtue of a collective bargaining agreement and productivity incentive schemes provided that the total monetary value received from both CBA and productive incentive schemes combined do not exceed Php10,000 per employee per taxable year.

This list is exclusive and anything that is given which is not on the list, shall not be considered de minimis. The 5% discount of purchase price of its products, not being in this enumeration, is subject to tax as well as to withholding tax on compensation.

c. 13th month pay and other benefits, and payments specifically excluded from taxable compensation income

iii. Deductions

a. Personal exemptions and additional exemptions

**In January 2013, your friend got his first job as an office clerk. He is single and lives with his family who depends upon him for financial support. His parents have long retired from their work, and his two (2) siblings are still minors and studying in grade school. In February 2014, he consulted you as he wanted to comply with all the rules pertaining to the preparation and filing of his income tax return. He now asks you the following:**

**(A) Is he entitled to personal exemptions? If so, how much? (1%)**
**(B) Is he entitled to additional exemptions? If so, how much? (1%)**
**(C) What is the effect of the taxes withheld from his salaries on his taxable income?**
(2014 Bar Question)
**SUGGESTED ANSWER :**

(A) Yes. The law allows a basic personal exemption of Php 50,000.00 for each individual taxpayer (*Section 35(A), NIRC).*

(B) No. While his parents and minor sibling are living with and dependent upon him for financial support, they are not qualified dependents for purposes of additional exemptions. The term "dependent" for purposes of the additional personal exemption would include only legitimate, illegitimate, or legally adopted children (*Section 35(B), NIRC).*

(C) The taxes withheld from his salaries will not affect his taxable income because they are not allowed as tax deductions but as tax credits. Tax deductions reduce taxable income while tax credits reduce the tax liability (*Central Drug Corporation v. CIR).*

**Mr. E and Ms. F are both employees of AAA Corp. They got married on February 14, 2011. On December 29, 2011, the couple gave birth to triplets. On June 25, 2013, they had twins. What were the personal exemptions/deductions which Mr. E**

**and Ms. F could claim in the following taxable years:** (2015 Bar Question)

**a) For 2010**
**b) For 2011**
**c) For 2013**

**SUGGESTED ANSWER:**

a. Both Mr. E and Ms. F can claim for personal exemption up to P50,000.00.

b. Either Mr. E or Ms. F can claim for additional exemption of P25,000.00 each for their children. This is in addition to the personal exemption of P50,000.00 which they can respectively claim. According to the Tax Code, only one of the spouses can claim for additional exemption for every dependent.

c. Mr. E and Ms. F can claim for personal exemptions, respectively. In addition, any one of them, exclusively, can claim for the additional exemptions in relation to their four dependents amounting to P25,000.00 each. Under the Tax Code, an individual may claim up to four additional exemptions in connection with his/her dependents.

b. Health and hospitalization insurance
c. Taxation of compensation income of a minimum wage earner
    1. Definition of statutory minimum wage
    2. Definition of minimum wage earner
    3. Income also subject to tax exemption: holiday pay, overtime pay, night-shift differential, and hazard pay

c. Taxation of business income/income from practice of profession
d. Taxation of passive income

**Passive income includes income derived from an activity in which the earner does not have any substantial participation. This type of income is:** (2011 Bar Question)

**(A) usually subject to a final tax.**
**(B) exempt from income taxation.**
**(C) taxable only if earned by a citizen.**
**(D) included in the income tax return.**

**SUGGESTED ANSWER:**

(A) usually subject to a final tax.

i. Passive income subject to final tax
    a. Interest income

i. Treatment of income from long-term deposits

b. Royalties

**ABC, a domestic corporation, entered into a software license agreement with XYZ, a non-resident foreign corporation based in the U.S. Under the agreement which the parties forged in the U.S., XYZ granted ABC the right to use a computer system program and to avail of technical know-how relative to such program. In consideration for such rights, ABC agreed to pay 5% of the revenues it receives from customers who will use and apply the program in the Philippines.**

**Discuss the tax implication of the transaction.** (2010 Bar Question)

**SUGGESTED ANSWER:**

The amount payable under the agreement is in the nature of a royalty. The term royalty is broad enough to include compensation for the use of an intellectual property and supply of technical know-how as a means of enabling the application or enjoyment of any such property or right. The royalties paid to the non-resident US Corporation, equivalent to 5% of the revenues derived by ABC for the use of the program in the Philippines, is subject to a 30% final withholding tax, unless a lower tax rate is prescribed under an existing tax treaty.

c. Dividends from domestic corporations

d. Prizes and other winnings

ii. Passive income not subject to final tax

e. Taxation of capital gains

i. Income from sale of shares of stock of a Philippine corporation

a. Shares traded and listed in the stock exchange

**A resident Filipino citizen (not a dealer in securities) sold shares of stocks of a domestic corporation that are listed and traded in the Philippine Stock Exchange. (2012 BAR)**

**a) The sale is exempt from income tax but subject to the 1⁄2 of 1% stock transaction tax;**
**b) The sale is subject to income tax computed at the graduated income tax rates of 5% to 32% on net taxable income;**
**c) The sale is subject to the stock transaction tax and income tax;**
**d) The sale is both exempt from the stock transaction tax and income tax.**

**SUGGESTED ANSWER:**

a) The sale is exempt from income tax but subject to the 1⁄2 of 1% stock transaction tax

Section 127, NIRC.

b. Shares not listed and traded in the stock exchange

**A dealer in securities sold unlisted shares of stocks of a domestic corporation in 2010 and derived a gain of P1 Million therefrom. The gain is:** (2012 BAR)

**a) Taxable at 30% regular corporate income tax based on net taxable income;**
**b) Taxable at 5%/10% capital gains tax based on net capital gain;**
**c) Taxable at 1/2 of 1% stock transaction tax based on the gross selling price or fair market value, whichever is higher**
**d) Exempt from income tax**

**SUGGESTED ANSWER:**

a) Taxable at 30% regular corporate income tax based on net taxable income
Section 22 (U) in relation to Section 27, NIRC.

ii. Income from the sale of real property situated in the Philippines

**Which statement is correct? A non-stock, non-profit charitable association that sells its idle agricultural property is:** (2012 BAR)

**a) Not required to file an income tax return nor pay income tax on the transaction to the BIR, provided the sales proceeds are invested in another real estate during the year;**
**b) Required to pay the 6% capital gains tax on the gross selling price of fair market value, whichever is higher;**
**c) Mandated to pay the 30% regular corporate income tax on the gain from sale;**
**d) Required to withhold the applicable expanded withholding tax rate on the transaction and remit the same to the BIR.**

**SUGGESTED ANSWER:**

b) Required to pay the 6% capital gains tax on the gross selling price of fair market value, whichever is higher
Section 30, NIRC.

**Melissa inherited from her father a 300-square-meter lot. At the time of her father's death on March 14, 1995, the property was valued at P720,000.00. On February 28, 1996, to defray the cost of the medical expenses of her sick son, she sold the lot for P600.000.00, on cash basis. The prevailing market value of the property at the time of the sale was P3.000.00 per square meter.**

**Is Melissa liable to pay capital gains tax on the transaction? If so, how much and why? If not, why not? (4%)**

**SUGGESTED ANSWER:**

Yes. The capital gains tax is 6% of the higher value between the selling price (P600,000.00) and fair market value of the real property (P900,000.00) or a tax in the amount of P54,000.00. The capital gains tax is due on the sale of a real property classified as a capital asset (Section 24(D)(1), NIRC). (BAR 2009)

iii. Income from the sale, exchange, or other disposition of other capital assets

11. Taxation of non-resident aliens engaged in trade or business
    a. General rules

    b. Cash and/or property dividends
    c. Capital gains

**Exclude: non-resident aliens not engaged in trade or business**

12. Individual taxpayers exempt from income tax
    a. Senior citizens
    b. Minimum wage earners
    c. Exemptions granted under international agreements

13. Taxation of domestic corporations

**Anchor Banking Corporation, which was organized in 2000 and existing under the laws of the Philippines and owned by the Sy Family of Makati City, set up in 2010 a branch office in Shanghai City, China, to take advantage of the presence of many Filipino workers in that area and its booming economy. During the year, the bank, management decided not to include the P20 Million net income of the Shanghai Branch in the annual Philippine income tax return filed with the BIR, which showed a net taxable income of P30 Million , because the Shanghai Branch is treated as a foreign corporation and is taxed only on income from sources within the Philippines, and since the loan and other business transactions were done in Shanghai, these incomes are not taxable in the Philippines. (2012 BAR)**

**a. Is the bank correct in excluding the net income of its Shanghai Branch in the computation of its annual corporate income tax for 2010? Explain your answer.**
**b. Should the Shanghai Branch of Anchor Bank remit profit to its Head Office in the Philippines in 2011, is the branch liable to the 15% branch profit remittance tax imposed under Sec. 28 (A)(5) of the 1997 Tax Code? Explain your answer**

**Suggested Answer:**

a. NO. **A Domestic Corporation is a taxable on all income derived from sources within and without the Philippines** *(Sec. 23, NIRC)*. The income of the foreign

branch and that of the Home Office will be summed up for income tax purposes following the "single entity" concept and will all be included in the gross income of the domestic corporation in the annual Philippine income tax return.

b. NO. The branch profit remittance tax is imposed only on remittances by branches of Foreign Corporation in the Philippines to their Home Office abroad. It is the **outbound branch profit that is subject to the tax not the inbound profits** *(Sec. 28(A)(5), NIRC).*

**Prior to the VAT law, sales of cars were subject to a sales tax but the tax applied only to the original or the first sale; the second and subsequent sales were not subject to tax.**

**Deltoid Motors, Inc. (Deltoid) hit on the idea of setting up a wholly-owned subsidiary, Gonmad Motors, Inc. (Gonmad), and of selling its assembled cars to Gonmad at a low price so it would pay a lower tax on the first sale. Gonmad would then sell the cars to the public at a higher price without paying any sales tax on this subsequent sale.**

**Characterize the arrangement. (1%)** (2013 Bar Question)

**(A) The plan is a legitimate exercise of tax planning and merely takes advantage of a loophole in the law.**
**(B) The plan is legal because the government collects taxes anyway.**
**(C) The plan is improper; the veil of corporate fiction can be pierced so that the second sale will be considered the taxable sale.**
**(D) The government must respect Gonmad's separate juridical personality and Deltoid's taxable sale to it.**

**SUGGESTED ANSWER:**

(C) The plan is improper; the veil of corporate fiction can be pierced so that the second sale will be considered the taxable sale.

The given problem is similar to the case of *Commissioner of Internal Revenue v. Norton and Harrison Company* (G.R. No. L-17618, August 31, 1964). The Supreme Court held that "a taxpayer may gain advantage of doing business thru a corporation if he pleases, but the revenue officers in proper cases, may disregard the separate corporate entity where it serves but as a shield for tax evasion and treat the person who actually may take benefits of the transactions as the person accordingly taxable.

To allow a taxpayer to deny tax liability on the ground that the sales were made through another and distinct corporation when it is proved that the latter is virtually owned by the former or that they are practically one and the same is to sanction a circumvention of our tax laws."

a. Tax payable

i. Regular tax

**ABS Corporation is a PEZA-registered export enterprise which manufactures cameras and sells all its finished products abroad. Which statement is NOT correct?** (2012 BAR)

**a) ABS Corporation is subject to the 5% final tax on gross income earned, in lieu of all national and local taxes;**
**b) ABS Corporation is exempt from the 30% corporate income tax on net income, provided it pays value added tax;**
**c) ABS Corporation is subject to the 30% corporate income tax on net income;**
**d) ABS Corporation is exempt from all national and local taxes, except real property tax.**

**SUGGESTED ANSWER:**

a) ABS Corporation is subject to the 5% final tax on gross income earned, in lieu of all national and local taxes
Sections 23 & 24, RA 7916.

ii. Minimum Corporate Income Tax (MCIT)
a. Imposition of MCIT

**KKK Corp. secured its Certificate of Incorporation from the Securities and Exchange Commission on June 3, 2013. It commenced business operations on August 12, 2013. In April 2014, Ms. J, an employee of KKK Corp. in charge of preparing the annual income tax return of the corporation for 2013, got confused on whether she should prepare payment for the regular corporate income tax or the minimum corporate income tax.**

**a) As Ms. J's supervisor, what will be your advice?**
**b) What are the distinctions between regular corporate income tax and minimum corporate income tax?** (2015 Bar Question)

**SUGGESTED ANSWER:**

a. As Ms. J's supervisor, I will advise that KKK Corp. should prepare payment for the regular corporate income tax. Under the Tax Code, Minimum Corporate Income Tax (MCIT) is applicable beginning on the fourth taxable year following the commencement of operation. Thus, in this case, KKK Corp. will only apply MCIT starting taxable year 2017.

b. Distinction as to taxpayer: Regular corporate income tax applies to all corporate taxpayers; while minimum corporate income tax applies to domestic corporations and resident foreign corporations.

Distinction as to rate: Regular income tax is 30%; while minimum corporate income tax is 2%.

Distinction as to tax base: Regular corporate income tax is based on the net taxable income, except nonresident foreign corporation which is based on gross income; while minimum corporate income tax is based on gross income.

Distinction as to period of applicability: Regular corporate income tax is applicable once the corporation commenced its operation, while MCIT is applicable beginning the fourth taxable year following the commencement of operation.

b. Carry forward of excess minimum tax
c. Relief from the MCIT under certain conditions
d. Corporations exempt from the MCIT

e. Applicability of the MCIT where a corporation is governed both under the regular tax system and a special income tax system

b. Allowable deductions

**Which of the following should not be claimed as deductions from gross income?** (2014 Bar Question)

**(A) discounts given to senior citizens on certain goods and services.**
**(B) advertising expense to maintain some form of goodwill for the taxpayer's business.**
**(C) salaries and bonuses paid to employees.**
**(D) interest payment on loans for the purchase of machinery and equipment used in business.**

**SUGGESTED ANSWER :**

B. Advertising expense to maintain some form of goodwill for the taxpayer's business.

**Freezy Corporation, a domestic corporation engaged in the manufacture and sale of ice cream, made payments to an officer of Frosty Corporation, a competitor in the ice cream business, in exchange for said officer's revelation of Frosty Corporation's trade secrets.**

**May Freezy Corporation claim the payment to the officer as deduction from its gross income? Explain.** (2014 Bar Question)

**SUGGESTED ANSWER :**

No. The payments made in exchange for the revelation of a competitors trade secrets is considered an expense which is against law, morals, good customs, or public policy,

which is not deductible (*3M Philippines, Inc. v. CIR, G.R. No. 82833, September 26, 1988).* Also, the law will not allow the deduction of bribes, kickback, and other similar payments. Applying the principle of *ejusdem generis*, payment made by *Freezy Corporation* would fall under "other similar payments" which are not allowed as deduction from gross income (*Section 34(A)(1)(c), NIRC).*

i. Itemized deductions
ii. Optional standard deduction

**The excess of allowable deductions over gross income of the business in a taxable year is known as:** (2011 Bar Question)
**(A) net operating loss.**
**(B) ordinary loss.**
**(C) net deductible loss.**
**(D) NOLCO.**

**SUGGESTED ANSWER:**

(A) net operating loss.

**A corporation can claim the optional standard deduction equivalent to 40% of its gross sales or receipts, as the case may be.**

**SUGGESTED ANSWER:**

FALSE [Sec. 34(L), NIRC, as amended by RA No. 9504.]

**Ernesto, a Filipino citizen and a practicing lawyer, filed his income tax return for 2007 claiming optional standard deductions. Realizing that he has enough documents to substantiate his profession-connected expenses, he now plans to file an amended income tax return for 2007, in order to claim itemized deductions, since no audit has been commenced by the BIR on the return he previously filed. Will Ernesto be allowed to amend his return? Why or why not? (4%)**

**SUGGESTED ANSWER:**

No. Since Ernesto has elected to claim the optional standard deduction, said election is irrevocable for the taxable year for which the return is made (Section 34(L), NIRC). (BAR 2009)

c. Taxation of passive income
i. Passive income subject to tax
a. Interest from deposits and yield, or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties

b. Capital gains from the sale of shares of stock not traded in the stock exchange

c. Income derived under the expanded foreign currency deposit system

d. Inter-corporate dividends

e. Capital gains realized from the sale, exchange, or disposition of lands and/or buildings

ii. Passive income not subject to tax

d) Taxation of capital gains

i. Income from sale of shares of stock

ii. Income from the sale of real property situated in the Philippines

iii. Income from the sale, exchange, or other disposition of other capital assets

**Sale of residential house and lot by an official of a domestic corporation to another official in the same corporation for a consideration of P2.5 Million in 2011 is:** (2012 BAR)

**a) Exempt from VAT because the gross sales do not exceed P2.5 Million;**
**b) Exempt from VAT because the property sold is a capital asset, regardless of the gross selling price;**
**c) Exempt from VAT because the seller is not a person engaged in real estate business;**
**d) Taxable at 12% VAT output tax on the gross selling price of P2.5 Million.**

**SUGGESTED ANSWER:**

b) Exempt from VAT because the property sold is a capital asset, regardless of the gross selling price
Section 106, NIRC.

e. Tax on proprietary educational institutions and hospitals

**Lualhati Educational Foundation, Inc., a stock educational institution organized for profit, decided to lease for commercial use a 1,500 sq. m. portion of its school. The school actually, directly, and exclusively used the rents for the maintenance of its school buildings, including payment of janitorial services. Is the leased portion subject to real property tax?** (2011 Bar Question)

**(A) Yes, since Lualhati is a stock and for profit educational institution.**
**(B) No, since the school actually, directly, and exclusively used the rents for educational purposes.**
**(C) No, but it may be subject to income taxation on the rents it receives.**
**(D) Yes, since the leased portion is not actually, directly, and exclusively used for educational purposes.**

**SUGGESTED ANSWER:**

(D) Yes, since the leased portion is not actually, directly, and exclusively used for educational purposes.

f. Tax on government-owned or controlled corporations, agencies or instrumentalities

14. Taxation of resident foreign corporations
    a) General rule
    b) With respect to their income from sources within the Philippines
    c) Minimum Corporate Income Tax
    d) Tax on certain income
        i. Interest from deposits and yield, or any other monetary benefit from deposit substitutes, trust funds and similar arrangements and royalties
        ii. Income derived under the expanded foreign currency deposit system
        iii. Capital gains from sale of shares of stock not traded in the stock exchange
        iv. Inter-corporate dividends

**Exclude:**

i. **International carrier**

**ii. Offshore banking units**

**iii. Branch profits remittances**

**iv. Regional or area headquarters and regional operating headquarters of multinational companies**

15. Taxation of non-resident foreign corporations
    a. General rule
    b. Tax on certain income
        i. Interest on foreign loans
        ii. Inter-corporate dividends
        iii. Capital gains from sale of shares of stock not traded in the stock exchange

**Foster Corporation (FC) is a Singapore-based foreign corporation engaged in construction and installation projects. In 2010, Global Oil Corporation (GOC), a domestic corporation engaged in the refinery of petroleum products, awarded an anti-pollution project to Foster Corporation, whereby FC shall design, supply machinery and equipment, and install an anti-pollution device for GOC's refinery in the Philippines, provided that the installation part of the project may be sub-contracted to a local construction company. Pursuant to the contract, the design and supply contracts were done in Singapore by FC, while the installation works were sub-contracted by the FC with the Philippine Construction Corporation (PCC), a domestic corporation. The project with a total cost of P100 Million was completed in 2011 at the following cost components: (design – P20Million;**

**machinery and equipment – P50 Million; and installation –P30 Million). Assume that the project was 40% complete in 2010 and 100% complete in 2011, based on the certificates issued by the certificates issued by the architects and engineers working on the project. GOC paid FC as follows: P60 Million in 2010 and P40 Million in 2011, and FC paid PCC in foreign currency through a Philippine bank as follows: P10 Million in 2010 and P20 Million in 2011.**

**Is FC liable to Philippines income tax, and if so, how much revenue shall be reported by it in 2010 and in 2011? Explain your answer. (2012 BAR)**

**Suggested Answer:**
NO. FC is not liable to Philippine income tax. The **revenues from the design and supply contracts having been all done in Singapore are income from without, hence, not taxable to a foreign corporation in the Philippines** (*Sec. 42, NIRC; CIR v. Marubeni Corporation G.R. No. 137377, December 18, 2001*). Also, with respect to the installation of the project which are services performed within, the same is sub-contracted to PCC, a domestic corporation. Since FC has no branch or permanent establishment in the Philippines, business profits earned by it pursuant to our treaty with Singapore are exempt from income tax.

*Note: If the examinee answered that the offshore portion of the contract (design and supply) is not taxable in the Philippines while the onshore portion (installation) is taxable invoking the source rules, it should be given full credit. The question might be too technical for students and expected new entrants to tax practice to discern.*

**Zygomite Minerals, Inc., a corporation registered and holding office in Australia, not operating in the Philippines, may be subject to Philippine income taxation on:** (2011 Bar Question)

**(A) gains it derived from sale in Australia of an ore crusher it bought from the Philippines with the proceeds converted to pesos.**
**(B) gains it derived from sale in Australia of shares of stock of Philex Mining Corporation, a Philippine corporation.**
**(C) dividends earned from investment in a foreign corporation that derived 40% of its gross income from Philippine sources.**
**(D) interests derived from its dollar deposits in a Philippine bank under the Expanded Foreign Currency Deposit System.**

**SUGGESTED ANSWER:**

(B) gains it derived from sale in Australia of shares of stock of Philex Mining Corporation, a Philippine corporation.

**Exclude:**

i. **Non-resident cinematographic film-owner, lessor or distributor**

ii. **Non-resident owner or lessor of vessels chartered by Philippine national**

iii. **Non-resident owner or lessor of aircraft machineries and other equipment**

16. Improperly accumulated earnings of corporations

**In 2009, Spratz, Inc.'s net profit before tax was P35 million while its operating expenses was P31 million. In 2010, its net profit before tax was P40 million and its operating expenses was P38 million. It did not declare dividends for 2009 and 2010. And it has no proposed capital expenditures for 2011 and the immediate future. May Spratz be subject to the improperly accumulated tax on its retained profits for 2009 and 2010?** (2011 Bar Question)

**(A) Yes, since the accumulated amounts are reasonable for operations in relation to what it usually needed annually.**
**(B) Yes, since the accumulation is not reasonably necessary for the immediate needs of the business.**
**(C) No, because there is no showing that the taxpayer's 2009 and 2010 net profit before tax exceeded its paid-up capital.**
**(D) No, because the taxpayer is not shown to be a publicly-listed corporation, a bank, or an insurance company.**

**SUGGESTED ANSWER:**

B) Yes, since the accumulation is not reasonably necessary for the immediate needs of the business.

17. Exemption from tax on corporations
18. Taxation of partnerships
19. Taxation of general professional partnerships

**Atty. Gambino is a partner in a general professional partnership. The partnership computes its gross revenues, claims deductions allowed under the Tax Code, and distributes the net income to the partners, including Atty. Gambino, in accordance with its articles of partnership.**

**In filing his own income tax return, Atty. Gambino claimed deductions that the partnership did not claim, such as purchase of law books, entertainment expenses, car insurance and car depreciation. The BIR disallowed the deductions.**

**Was the BIR correct?** (2013 Bar Question)

**SUGGESTED ANSWER:**

The BIR is wrong in disallowing the deductions.

Under Section 26 of the NIRC, a genreal professional partnership is exempt from income tax and, thus, cannot claim deductions. However, partners in a general professional partnership are liable, in their separate and individual capacities, for the payment of income tax computed on their distributive share of the general professional partnership's profits. Consequently, these partners may claim deductions under Section 34 of the NIRC from their gross income.

In the given problem, Atty. Gambino's expenses for the purchase of law books and the availment of car insurance are allowable deductions because they are ordinary and necessary expenses in the exercise of his profession. Law books are directly attributable to Atty. Gambino's development and conduct as a lawyer pursuant to Section 34(A)(1)(a) of the NIRC. Meanwhile, car insurance is an ordinary and necessary expense in the purchase of a car. It should be noted that cars are ordinarily used by lawyers who travel from one place to another for purposes of attending hearings, meeting clients, signing agreements, and the like. For these same reasons, a reasonable allowance for the car's depreciation is deductible under Section (34)(F)(1) of the NIRC. A reasonable allowance for entertainment or representation expenses can also be claimed as deduction from gross income, as these expenses are directly connected or in the furtherance of the conduct of Atty. Gambino's profession as a lawyer, applying Section (34)(A)(1)(a)(iv) of the NIRC and Revenue Regulation No. 10-2002.

**XYZ Law Offices, a law partnership in the Philippines and a VAT-registered taxpayer, received a query by e-mail from Gainsburg Corporation, a corporation organized under the laws of Delaware, but the e-mail came from California where Gainsburg has an office. Gainsburg has no office in the Philippines and does no business in the Philippines.**

**XYZ Law Offices rendered its opinion on the query and billed Gainsburg US$1,000 for the opinion. Gainsburg remitted its payment through Citibank which converted the remitted US$1 ,000 to pesos and deposited the converted amount in the XYZ Law Offices account.**

**What are the tax implications of the payment to XYZ Law Offices in terms of VAT and income taxes?** (2013 Bar Question)

**SUGGESTED ANSWER:**

Preliminarily, XYZ Law Offices is a general professional partnership which is defined under Sec. 22(B) of the NIRC as a partnership formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business. On the other hand, Gainsburg is considered as a nonresident foreign corporation under Sec. 22(I) of the NIRC. The tax implications are as follows:

As to VAT: XYZ Law Offices, as a general professional partnership, is subject to VAT as it rendered services to Gainsburg. Pursuant to Sec. 105 of the NIRC, any person who, in the course of business, renders services shall be subject to VAT.

In the given problem, the XYZ Law Offices rendered services to a nonresident person not engaged in business and which is outside the Philippines. The consideration for the services was paid in an acceptable foreign currency. Therefore, the transaction in the given problem is subject to zero percent (0%) rate of VAT provided under Sec. 108 (B)(2) of the NIRC.

As to income tax: XYZ Law Office is not subject thereto because it is a general professional partnership. Sec. 26 of the NIRC expressly provides that a general professional partnership shall not be subject to the income tax. Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities.

**A, B, and C, all lawyers, formed a partnership called ABC Law Firm so that they can practice their profession as lawyers. For the year 2012, ABC Law Firm received earnings and paid expenses, among which are as follows:**

**Earnings:**
**(1) Professional/legal fees from various clients**
**(2) Cash prize received from a religious society in recognition of the exemplary service of ABC Law Firm**
**(3) Gains derived from sale of excess computers and laptops**

**Payments:**
**(1) Salaries of office staff**
**(2) Rentals for office space**
**(3) Representation expenses incurred in meetings with clients**

**(A) What are the items in the above mentioned earnings which should be included in the computation of ABC Law Firm's gross income? Explain.**

**(B) What are the items in the above-mentioned payments which may be considered as deductions from the gross income of ABC Law Firm? Explain.**

**(C) If ABC Law Firm earns net income in 2012, what, if any, is the tax consequence on the part of ABC Law Firm insofar as the payment of income tax is concerned? What, if any, is the tax consequence on the part of A, B, and C as individual partners, insofar as the payment of income tax is concerned?** (2014 Bar Question)

**SUGGESTED ANSWER :**

(A) The three (3) items of earnings should be included in the computation of ABC *Law Firm's* gross income. The professional/legal fees from various clients is included as part of gross income being in the nature of compensation for services (*Section 32(A)(1), NIRC).* The cash prize from a religious society in recognition of its exemplary services is also included there being no law providing for its exclusion. This is not a prize in recognition of any of the achievements enumerated under the law hence, should form part of gross income (*Section 32(B)(7)(c), NIRC).* The gains from sale of excess computers and laptops should also be included as part of the firm's gross income because the term gross income specifically includes gains derived from dealings in property (*Section 32(A)(3), NIRC).*

(B) The law firm being formed as general professional partnership is entitled to the same deductions allowed to corporation (*Section 26, NIRC).* Hence, the three (3) items of deductions mentioned in the problem are all deductible, they being in the nature of ordinary and necessary expenses incurred in the practice of profession (*Section 34(A), NIRC).* However, the amount deductible for representation expenses incurred by a taxpayer engaged in sale of services, including a law firm, is subject to a ceiling of 1% of net revenue. (*RR No. 10-2002)*

(C) The net income having been earned by the law firm which is formed and qualifies as a general professional partnership, is not subject to income tax because the earner is devoid of any income tax personality. Each partner shall report as gross income his distributive shares, actuality or constructively received, in the net income of the partnership. The partnership is merely treated for income tax purposes as a pass-through entity so that its net income is not taxable at the level of the partnership bur said net income should be attributed to the partners, whether or not distributed to them, and they are liable to pay the income tax based on their respective taxable income as individual taxpayers (*Section 26, NIRC).*

20. Withholding tax
- a. Concept
- b. Kinds
  - i. Withholding of final tax on certain incomes

**BBB, Inc., a domestic corporation, enjoyed a particularly profitable year in 2014. In June 2015, its Board of Directors approved the distribution of cash dividends to its stockholders. BBB, Inc. has individual and corporate stockholders. What is the tax treatment of the cash dividends received from BBB, Inc. by the following stockholders:** (2015 Bar Question)

**a) A resident citizen**
**b) Non-resident alien engaged in trade or business**
**c) Non-resident alien not engaged in trade or business**
**d) Domestic corporation**
**e) Non-resident foreign corporation**

**SUGGESTED ANSWER:**

a. A final withholding tax of ten percent (10%) shall be imposed upon the cash dividends actually or constructively received by a resident citizen from BBB, Inc.

b. A final withholding tax of twenty percent (20%) shall be imposed upon the cash dividends actually or constructively received by a nonresident alien engaged in trade or business from BBB, Inc.

c. A final withholding tax equal to twenty-five percent (25%) of the entire income received from all sources within the Philippines, including the cash dividends received from BBB, Inc.

d. Dividends received by a domestic corporation from another corporation, such as BBB, Inc., shall not be subject to tax.

e. A final withholding tax of fifteen percent (15%) is imposed on the amount of cash dividends received from BBB, Inc., subject to the tax sparing credit provision (Section 28(B)(5)(b), NIRC).

The application of the tax sparing credit is that the country-domicile of the recipient corporation allows a credit against the tax due from the non-resident foreign corporation. Otherwise, the applicable tax rate is thirty percent (30%) of the gross income received during each taxable year from all sources within the Philippines.

ii. Withholding of creditable tax at source

c. Withholding of VAT

d. Filing of return and payment of taxes withheld

**Indicate whether each of the following individuals is required or not required to file an income tax return:** (2015 Bar Question)

**a) Filipino citizen residing outside the Philippines on his income from sources outside the Philippines.**
**b) Resident alien on income derived from sources within the Philippines.**
**c) Resident citizen earning purely compensation income from two employers within the Philippines, whose income taxes have been correctly withheld.**
**d) Resident citizen who falls under the classification of minimum wage earners. e) An individual whose sole income has been subjected to final withholding tax.**

**SUGGESTED ANSWER:**

a. No, because a non-resident Filipino citizen is taxable only in income sourced within the Philippines.

b. Yes because a resident alien is taxable for income derived from sources within the Philippines.
c. Yes. A resident citizen who is earning purely compensation income from two employers should file income tax return for not being qualified for substituted filing.
d. No. Under the law, all minimum wage earners in the private and public sector shall be exempt from payment of income tax.
e. No. Under the law, an individual whose sole income has been subjected to final withholding tax pursuant to Section 57(A) of the NIRC need not file a return.

i. Return and payment in case of government employees
ii. Statements and returns

**On April 30, 2015, Daryl resigned as the production manager of 52nd Avenue, a television studio owned by SSS Entertainment Corporation. 52nd Avenue issued to her a Certificate of Withholding Tax on Compensation (BIR Form No. 2316), which showed that the tax withheld from her compensation was equal to her income tax due for the period from January 2015 to April 30 2015.**

**A month after her resignation, Daryl put up her own studio and started producing short films. She was able to earn a meager income from her short films but did not keep record of her production expenses.**

**Is Daryl qualified for substituted filing for taxable year 2015? Explain your answer. (3%) (2017 BAR)**

**SUGGESTED ANSWER:**

No. Following the relevant revenue issuance, only an individual receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer shall qualify for substituted filing of income tax return (Revenue Regulations No. 3-2002). Daryl, within the same calendar year, derived income from producing short films. Thus, she did not receive purely compensation income for calendar year 2015. Accordingly, the amount withheld from her compensation income is not equal to the income tax due on his aggregate taxable income during the taxable year.

**Raffy and Wena; husband and wife, are both employed by XXX Corporation. After office hours, they jointly manage a coffee shop at the ground floor of their house. The coffee shop is registered in the name of both spouses. Which of the following is the correct way to prepare their income tax return? Write the letter only. DO NOT EXPLAIN YOUR ANSWER. (2%)**

**A. Raffy will declare as his income the salaries of both spouses, while Wena will declare he income from the coffee shop.**

**B. Wena will declare the combined compensation income of he spouses, and Raffy will declare the income from the coffee shop.**

**C. All the income will be declared by raffy alone, because only one consolidated return is required to be filed by the spouses.**

**D. Raffy will declare his own compensation income and Wena will declare hers. The income from the coffee shop shall be equally divided between them. Each spouse shall be taxed separately on their corresponding taxable income to be covered by one consolidated return for the spouses.**

**E. Raffy will declare his own compensation income and Wena will declare hers. The income from the coffee shop shall be equally divided between them. Raffy will file one income tax return to cover all the income of both spouses, and the tax is computed on the aggregate taxable income of the spouses.**

**SUGGESTED ANSWER:**

[d] Raffy will declare his own compensation and Wena will declare hers. The income from the coffee shop shall be equally divided between them. Bach spouse shall be taxed separately on their corresponding taxable income to be covered by one consolidated return for the spouses. (BAR 2009)

e. Final withholding tax at source

**True or False. Informer's reward is subject to a final withholding tax of 10%.** (2010 Bar Question)

**SUGGESTED ANSWER:**

True. (Sec. 282, NIRC)

f. Creditable withholding tax

i. Expanded withholding tax

ii. Withholding tax on compensation

g. Timing of withholding

**The payor of passive income subject to final tax is required to withhold the tax from the payment due the recipient. The withholding of the tax has the effect of:** (2011 Bar Question)

**(A) a final settlement of the tax liability on the income.**
**(B) a credit from the recipient's income tax liability.**
**(C) consummating the transaction resulting in an income.**
**(D) a deduction in the recipient's income tax return.**

**SUGGESTED ANSWER:**

(A) a final settlement of the tax liability on the income.

III. Estate tax

**Don Fortunato, a widower, died in May, 2011. In his will, he left his estate of P100 million to his four children. He named his compadre, Don Epitacio, to be the administrator of the estate. When the BIR sent a demand letter to Don Epitacio for the payment of the estate tax, he refused to pay claiming that he did not benefit from the estate, he not being an heir. Forthwith, he resigned as administrator. As a result of the resignation, who may be held liable for the payment of the estate tax?** (2011 Bar Question)

**(A) Don Epitacio since the tax became due prior to his resignation.**
**(B) The eldest child who would be reimbursed by the others.**
**(C) All the four children, the tax to be divided equally among them.**
**(D) The person designated by the will as the one liable.**

**SUGGESTED ANSWER:**

(C) All the four children, the tax to be divided equally among them.

1. Basic principles
2. Definition
3. Nature
4. Purpose or object
5. Time and transfer of properties
6. Classification of decedent
7. Gross estate *vis-à-vis* net estate
8. Determination of gross estate and net estate
9. Composition of gross estate

**In 1999, Xavier purchased from his friend, Yuri, a painting for P500,000.00. The fair market value (FMV) of the painting at the time of the purchase was PI-million. Yuri paid all the corresponding taxes on the transaction. In 2001, Xavier died. In his last will and testament, Xavier bequeathed the painting, already worth PI.5-million, to his only son, Zandro. The will also granted Zandro the power to appoint his wife, Wilma, as successor to the painting in the event of Zandro's death. Zandro died in 2007, and Wilma succeeded to the property.**

**[a] Should the painting be included in the gross estate of Xavier in 2001 and thus, be subject to estate tax? Explain. (3%)**

**SUGGESTED ANSWER:**

Yes. The transmission of the property from Xavier to Zandro is subject to the estate tax because this is a property within Xavier's control to dispose upon his death. The composition of the gross estate pertains to properties owned and existing as of the time of death and to be transferred by the owner by death (Section 85, NIRC), (BAR 2009)

10. Items to be included in gross estate

**Don Sebastian, single but head of the family, Filipino, and resident of Pasig City, died intestate on November 15, 2009.**

**He left the following properties and interests:**

| | |
|---|---|
| **House and lot (family home) in Pasig** | **P 800,000** |
| **Vacation house and lot in Florida, USA** | **1,500,000** |
| **Agricultural land in Naic, Cavite which he inherited from his father** | **2,000,000** |
| **Car which is being used by his brother in Cavite** | **500,000** |
| **Proceeds of life insurance where he named his estate as irrevocable beneficiary** | **1,000,000** |
| **Household furnitures and appliances** | **1,000,000** |
| **Claims against a cousin who has assets of P10,000 and liabilities of PI00,000** | **100,000** |
| **Shares of stock in ABC Corp, a domestic enterprise** | **100,000** |

**The expenses and charges on the estate are as follows:**

| | |
|---|---|
| **Funeral Expenses** | **P 250,000** |
| **Legal fees for the settlement of the estate 500,000** | |
| **Medical expenses of last illness** | **600,000** |
| **Claims against the estate** | **300,000** |

**The compulsory heirs of Don Sebastian approach you and seek your assistance in the settlement of his estate for which they have agreed to the above-stated professional fees. Specifically, they request you to explain and discuss with them the following questions. You oblige:**

**A. What are the properties and interests that should be included in the computation of the gross estate of the decedent? Explain. (2.5%)**
**B. What is the net taxable estate of the decedent? Explain. (2.5%)**
**C. When is the due date for filing and payment of the applicable tax return and tax? Are these dates extendible? If so, under what conditions or requirements? (2.5%)**
**D. If X, one of the compulsory heirs, renounces his share in the inheritance in favor of the other co-heirs, is there any tax implication of X's renunciation? What about the other coheirs? (2.5%) (2010 Bar Question)**

**SUGGESTED ANSWER:**

A. All the properties and interests enumerated in the problem should be included in the gross estate of the decedent. The composition of the gross estate of the decedent who is a citizen of the Philippines includes all properties, real or personal, tangible or intangible, wherever situated and to the extent of the interest that he has thereon at the time of his death (Sec. 85, NIRC).

B. The net taxable estate of the decedent is Php 3.7M. From the gross estate of Php 7.0M, the following deductions are allowed: (1) Funeral expenses of Php 200K which is the maximum allowed by law, (2) legal fees amounting to Php 500K; (3) medical expenses not to exceed Php 500K incurred one year prior to death and substantiated with receipts; (4) claims against the estate of Php 300K; (5) family home equivalent to its FMV (not to exceed Php 1.0M) of Php 800K and (6) standard deduction of Php 1.0M or a total allowable deduction of Php 3.3M. The claim against the cousin amounting to Php 100K although includible in the gross estate cannot be claimed as a deduction because the debtor is not yet declared insolvent. Likewise, the inherited property cannot give rise to a vanishing deduction for want of sufficient factual basis.

C. The tax return and the payment of the estate tax are both due within six (6) months from death. The filing of the return is extendible for a maximum period of 30 days under meritorious cases as maybe determined by the CIR. Whereas, the payment of the estate tax may also be extended when the CIR finds that the payment thereof would impose undue hardship upon the estate or any of the heirs. The period of extension to pay shall not exceed 5 years from death if the estate is settled through the courts or shall not exceed 2 years from death if settled extra-judicially. The CIR may require the executor or administrator or the beneficiary to furnish a bond in an amount not more than double the amount of the estate tax due.

D. If the renunciation is a general renunciation (in favor of co-heirs in accordance with their respective interest in the inheritance), the law on accretion applies and the property waived is considered to pass through the other co-heirs by inheritance; hence, it has no tax implication. There is no donation of property because the property had never become the property of the donor. Such being the case, the renunciation is not subject to donor's tax. If it is not a general renunciation in favor of the other co-heirs, the heir renouncing his right is considered to have made a donation and the renunciation is subject to donor's tax. In both cases, however, the renunciation has no tax implication to the other co-heirs.

**In the settlement of the estate of Mr. Barbera who died intestate, his wife renounced her inheritance and her share of the conjugal property in favor of their children. The BIR determined that there was a taxable gift and thus assessed Mrs. Barbera as a donor.**

**Was the BIR correct?** (2013 Bar Question)

**SUGGESTED ANSWER:**

The BIR is not correct in imposing donor's tax on the renounced inheritance of Mrs. Barbera from Mr. Barbera. According to Section 11 of the RR No. 2-2003: "General renunciation by an heir, including the surviving spouse, of his/her share in the hereditary estate left by the decedent is not subject to donor's tax, unless specifically and categorically done in favor of identified heir/s to the exclusion or disadvantage of other co-heirs in the hereditary estate."

On the other hand, the BIR is correct in imposing donor's tax on the renounced conjugal share of Mrs. Barbera. This is because Section 11 of RR No. 2-2003 provides that "renunciation by the surviving spouse of his/her share in the conjugal partnership or absolute community after the dissolution of the marriage in favor of the heirs of the deceased spouse or any other person/s is subject to donor's tax." This proceeds from the rule that the share of the conjugal property is the share of the surviving spouse. Thus, the surviving spouse is effectively donating property when he or she makes a renunciation.

**Tong Siok, a Chinese billionaire and a Canadian resident, died and left assets in China valued at P80 billion and in the Philippines assets valued at P20 billion. For Philippine estate tax purposes the allowable deductions for expenses, losses, indebtedness, and taxes, property previously taxed, transfers for public use, and the share of his surviving spouse in their conjugal partnership amounted to P15 billion. Tong's gross estate for Philippine estate tax purposes is:** (2011 Bar Question)

(A) P20 billion. (B) P5 billion. (C) P100 billion. (D) P85 billion.

**SUGGESTED ANSWER:**

(A) P20 billion

**While he was traveling with friends, Mr. Jose Francisco, resident Filipino citizen, died on January 20, 2011 in a California Hospital, USA, leaving personal and real properties with market values as follows: House and Lot in Quezon City – P10 Million; Cash in bank in California – US$10,000.00; Citibank in New York – US$5,000.00; Cash in BPI Makati – P4 Million; Car in Quezon City – P1 Million; Shares of stocks of Apple Corporation, US corporation listed in NY Stock Exchange – US$1 = Php50. His gross estate for the Philippine estate tax purposes shall be:** (2012 BAR)

a) P13 Million; b) P14 Million; c) P15 Million; d) P16 Million.

**SUGGESTED ANSWER:**

b) P14 Million
Section 85, NIRC.

**Mr. Mayuga donated his residential house and lot to his son and duly paid the donor's tax. In the Deed of Donation, Mr. Mayuga expressly reserved for himself the usufruct over the property for as long as he lived.**

**Describe the donated property from the taxation perspective. (1%)** (2013 Bar Question)

**(A) The property will form part of Mr. Mayuga's gross estate when he dies.**
**(B) The property will not fom1 part of Mr. Mayuga's gross estate when he dies because he paid the donor's tax.**
**(C) The property will form part of Mr. Mayuga's gross estate because he died soon after the donation.**
**(D) The property will not form part of Mr. Mayuga's gross estate because it is no longer his.**

**SUGGESTED ANSWER:**

**(A) The property will form part of Mr. Mayuga's gross estate when he dies.**

Applying Section 85 (B) of the NIRC, the donated property will still form part of the gross estate of the decedent when in the deed of donation, the donor "has retained for his life or for any period which does not in fact end before his death 91) the possession or enjoyment of, or the right to the income from the property."

Therefore, the property will form part of Mr. Mayuga's gross estate when he dies because he donated the property in contemplation of death.

**Mr. Agustin, 75 years old and suffering from an incurable disease, decided to sell for valuable and sufficient consideration a house and lot to his son. He died one year later.**

**In the settlement of Mr. Agustin's estate, the BIR argued that the house and lot were transferred in contemplation of death and should therefore form part of the gross estate for estate tax purposes.**

**Is the BIR correct?** (2013 Bar Question)

**SUGGESTED ANSWER:**
The BIR is not correct.

Pursuant to Section 85(B) of the NIRC, properties that are transferred in contemplation of death form part of the gross estate of the decedent. An exception to this is a *bona fide* sale for an adequate and full consideration in money.

Therefore, the house and lot which Mr. Agustin sold to his son for a valuable and

sufficient consideration should not be considered as forming part of Mr. Agustin's gross estate.

**Mr. X, a Filipino residing in Alabama, U.S.A., died on January 2, 2013 after undergoing a major heart surgery. He left behind to his wife and two (2) kids several properties, to wit: (4%)**
**(1) Family home in Makati City;**
**(2) Condominium unit in Las Piñas City;**
**(3) Proceeds of health insurance from Take Care, a health maintenance organization in the Philippines; and**
**(4) Land in Alabama, U.S.A.**

**The following expenses were paid:**
**(1) Funeral expenses;**
**(2) Medical expenses; and**
**(3) Judicial expenses in the testate proceedings.**

**(A) What are the items that must be considered as part of the gross estate income of Mr. X?**
**(B) What are the items that may be considered as deductions from the gross estate?** (2014 Bar Question)

**SUGGESTED ANSWER :**

(A) All the items of properties enumerated in the problem shall form part of the gross estate of Mr. X. The composition of the gross estate of a decedent who is a Filipino citizen shall include all of his properties, real or personal, tangible or intangible, wherever situated (*Section 85, NIRC).*

(B) All the items of expenses are deductible from his gross estate. However, the allowable amount of funeral expenses shall be 5% of the gross estate or actual , whichever is lower, but in no case shall the amount deductible go beyond Php 200,000.00. Likewise, the deductible medical expenses must be limited to those incurred within one year prior to his death but not to exceed Php 500,000.00 (*Section 86, NIRC)*.

11. Deductions from estate

**Casimira died on June 19, 2017, after three weeks of confinement due to an unsuccessful liver transplant. For her confinement, she had incurred substantial medical expenses that she financed through personal loans secured by mortgages on her real properties. Her heirs are still in the process of making an inventory of her assets that can be used to pay the estate taxes, if any, which are due on December 19, 2017.**

**a. Are the medical expenses, personal loans and mortgages incurred by Casimira deductible from her gross estate? Explain your answer. (5%) (2017 BAR)**

**SUGGESTED ANSWER:**

a. Yes, subject to certain conditions set by the NIRC. As for the medical expenses, they must be incurred within one year from death, whether paid or unpaid, and the amount must not exceed P500,000. As for the personal loans, it is required that the loan document must be notarized and if incurred within three years from date of death, the executor or administrator shall submit a statement showing the disposition of the proceeds of the loan. As to the mortgages, it is required that the fair market value of Casimira's interest in the said property, undiminished by such mortgage or indebtedness, is included in the value of the gross estate. The claims for personal loans and mortgages must have been contracted bona fide and for an adequate consideration in money or money's worth. (Section 86, NIRC).

**b. May the heirs of Casimira file the estate tax return and pay the corresponding estate tax beyond December 19, 2017, without incurring interest and surcharge? Explain your answer. (3%) (2017 BAR)**

**SUGGESTED ANSWER:**

b. The heirs may file the estate tax return beyond December 19, 2017, so long as they filed a request for a reasonable extension, not exceeding 30 days. Once the request for extension has been granted and the return filed within the extended period following the "pay-as-you-file" procedure, only the interest on extended payment maybe imposed but not the surcharge. However, interest and surcharge may be imposed upon failure of the heirs to file and pay the estate tax within the extended period granted by the CIR. (Sections 248(A) and 249 (D), NIRC). Section 91, on the other hand, allows for the extension of the time to pay the estate tax due for a period not exceeding five (5) years in case the estate is settled through the courts, or two (2) years in case the estate is settled extrajudicially. If an extension is granted, the interest on extended payment may be imposed. The Commissioner may require the executor, or administrator, or beneficiary, as the case may be, to furnish a bond in an amount not exceeding double the amount of the tax and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the said tax in accordance with the terms of the extension.

**Jose Ramos, single, died of a heart attack on October 10, 2011, leaving a residential house and lot with a market value of P1.8 Million and cash of P100,000.00. Funeral expenses paid amounted to P250,000.00.** (2012 BAR)

**a) His estate will be exempt from estate tax because the net estate is zero;**
**b) His estate will be subject to estate tax because net estate is P1,650,000.00;**
**c) His estate will be subject to estate tax because net estate is P1,700,00.00;**
**d) His estate will be subject to estate tax because net estate is P800,000.00.**

**SUGGESTED ANSWER:**

a) His estate will be exempt from estate tax because the net estate is zero
Section 85 & 86, NIRC.

**During his lifetime, Mr. Sakitin obtained a loan amounting to P10 million from Bangko Uno for the purchase of a parcel of land located in Makati City, using such property as collateral for the loan. The loan was evidenced by a duly notarized promissory note. Subsequently, Mr. Sakitin died. At the time of his death, the unpaid balance of the loan amounted to P2 million. The heirs of Mr. Sakitin deducted the amount of P2 million from the gross estate, as part of the "Claims against the Estate." Such deduction was disallowed by the Bureau of Internal Revenue (BIR) Examiner, claiming that the mortgaged property was not included in the computation of the gross estate. Do you agree with the BIR? Explain.** (2014 Bar Question)

**SUGGESTED ANSWER :**

Yes. Unpaid mortgages upon, or any indebtedness with respect to property are deductible from the gross estate only if the value of the decedent's interest in said property, undiminished by such mortgage or indebtedness, is included in the gross estate (*Section 86(A)(1)(e)).* In the instant case, the interest of the decedent in the property purchased from the loan where the said property was used as the collateral, was not included in the gross estate. Accordingly, the unpaid balance of the loan at the time of Mr. Sakitin's death is not deductible as "Claims against the Estate."

**Don Sebastian, single but head of the family, Filipino, and resident of Pasig City, died intestate on November 15, 2009.**

**He left the following properties and interests:**

| | |
|---|---|
| **House and lot (family home) in Pasig** | **P 800,000** |
| **Vacation house and lot in Florida, USA** | **1,500,000** |
| **Agricultural land in Naic, Cavite which he inherited from his father** | **2,000,000** |
| **Car which is being used by his brother in Cavite** | **500,000** |
| **Proceeds of life insurance where he named his estate as irrevocable beneficiary** | **1,000,000** |
| **Household furnitures and appliances** | **1,000,000** |
| **Claims against a cousin who has assets of P10,000 and liabilities of PI00,000** | **100,000** |
| **Shares of stock in ABC Corp, a domestic enterprise** | **100,000** |

**The expenses and charges on the estate are as follows:**

| | |
|---|---|
| **Funeral Expenses** | **P250,000** |
| **Legal fees for the settlement of the estate 500,000** | |

| | |
|---|---|
| **Medical expenses of last illness** | **600,000** |
| **Claims against the estate** | **300,000** |

**The compulsory heirs of Don Sebastian approach you and seek your assistance in the settlement of his estate for which they have agreed to the above-stated professional fees. Specifically, they request you to explain and discuss with them the following questions. You oblige:**

**B. What is the net taxable estate of the decedent? Explain. (2.5%)**

**SUGGESTED ANSWER:**

The net taxable estate of the decedent is P3,700,000.00. From the gross estate of P7 million the following deductions are allowed: (1) funeral expenses of P200,000 which is the maximum allowed by law; (2) legal fees amounting to P500,000; (3) medical expenses not to exceed P500,000; (4) Claims against the estate of P300,000; (5) family home equivalent to its fair market value (not to exceed PI million) of P800,000; and (6) standard deduction of PI million, or a total allowable deduction of P3,300,000 (Sec. 86, NIRC).

The claim against the cousin amounting to P100,000, although includable in the gross estate, cannot be claimed as a deduction because the debtor is not yet declared insolvent. Likewise, the inherited property cannot give rise to a vanishing deduction for want of sufficient factual basis (Sec. 86, NIRC).

**In 1999, Xavier purchased from his friend, Yuri, a painting for P500,000.00. The fair market value (FMV) of the painting at the time of the purchase was PI-million. Yuri paid all the corresponding taxes on the transaction. In 2001, Xavier died. In his last will and testament, Xavier bequeathed the painting, already worth PI.5-million, to his only son, Zandro. The will also granted Zandro the power to appoint his wife, Wilma, as successor to the painting in the event of Zandro's death.**

**Zandro died in 2007, and Wilma succeeded to the property.**

**[c] May a vanishing deduction be allowed in either or both of the estates? Explain. (3%)**

**SUGGESTED ANSWER:**

Vanishing deduction shall be allowed to the estate of Xavier but only to the extent of Ya of the property which is the portion acquired by gift (Section 100, NIRC), The donation took place within 5 years (1999 to 2001) from the death of Xavier; hence, there is a vanishing deduction. However, Zandro's estate will not be entitled to claim vanishing deduction because, first and foremost, the property previously taxed is not includable in his gross estate and second, even if it is includable, the present decedent died more

than 5 years from the death of the previous decedent, and that;a vanishing deduction is already claimed by the previous estate involving the same property. (BAR 2009)

12. Exclusions from estate

**Which among the following reduces the gross estate (not the net estate) of a citizen of the Philippines for purposes of estate taxation?** (2011 Bar Question)

**(A) Transfers for public use**
**(B) Property previously taxed**
**(C) Standard deduction of P1 million**
**(D) Capital of the surviving spouse**

**SUGGESTED ANSWER:**

(D) Capital of the surviving spouse

**State the conditions for allowing the following as deductions from the gross estate of a citizen or resident alien for the purpose of imposing estate tax:**
**a. Claims against the estate**
**b. Medical expenses** (2015 Bar Question)

**SUGGESTED ANSWER:**

a. In order that the claims against the estate may be deducted, the following are the requisites:

1. The liability represents a personal obligation of the deceased existing at the time of his death except unpaid obligations incurred incident to his death such as unpaid funeral expenses and unpaid medical expenses;
2. The liability was contracted in good faith and for adequate and full consideration in money or money's worth;
3. The claim must be a debt or claim which is valid in law and enforceable in court;
4. The indebtedness must not have been condoned by the creditor or the action to collect from the decedent must not have prescribed.

At the time the indebtedness was incurred, the debt instrument was duly notarized and if the loan was contracted within three (3) years before the death of the decedent, the administrator or executor shall submit a statement showing the disposition of the proceeds of the loan.

b. All medical expenses incurred within one (1) year before the death of the decedent which are duly substantiated with receipts, provided that the total amount thereof, whether paid or unpaid, does not exceed Five Hundred Pesos (P500,000.00).

13. Tax credit for estate taxes paid in a foreign country
14. Exemption of certain acquisitions and transmissions

**In 1999, Xavier purchased from his friend, Yuri, a painting for P500,000.00. The fair market value (FMV) of the painting at the time of the purchase was PI-million. Yuri paid all the corresponding taxes on the transaction. In 2001, Xavier died. In his last will and testament, Xavier bequeathed the painting, already worth PI.5-million, to his only son, Zandro. The will also granted Zandro the power to appoint his wife, Wilma, as successor to the painting in the event of Zandro's death.**

**Zandro died in 2007, and Wilma succeeded to the property.**

**[b] Should the painting be included in the gross estate of Zandro in 2007 and thus, be subject to estate tax? Explain. (3%)**

**SUGGESTED ANSWER:**

No. The transmission from the first heir, legatee or donee in favor of another beneficiary, in accordance with the desire of the predecessor is an exempt transfer (Section 87, NIRC), Zandro has no control over the disposition of the property at the time of his death; hence, the estate tax which imposed the privilege of transmitting properties upon his death will not apply.

**ALTERNATIVE ANSWER:**
No. The property passes from Zandro to Wilma by virtue of the special power of appointment granted by Xavier. The law includes as part of the gross estate of the decedent a property passing under general (not special) power of appointment. The grantee of the power to appoint, Zandro, has no control over the disposition of the property because it is the desire of the grantor of the power that the property will go to a specific person. This being so, the painting should not be included in the gross estate of Zandro, hence, it is not subject to estate tax (Section 85(D), NIRC). (BAR 2009)

15. Filing of notice of death
16. Estate tax return

**Gerardo died on July 31, 2011. His estate tax return should be filed within:** (2011 Bar Question)

**(A) six months from filing of the notice of death.**
**(B) sixty days from the appointment of an administrator.**
**(C) six months from the time he died on July 31, 2011.**
**(D) sixty days from the time he died on July 31, 2011.**

**SUGGESTED ANSWER:**

(C) six months from the time he died on July 31, 2011.

IV. Donor's tax
1. Basic principles
2. Definition
3. Nature
4. Purpose or object
5. Requisites of valid donation

6. Transfers which may be constituted as donation
    a. Sale/exchange/transfer of property for insufficient consideration

**In 2011, Solar Computer Corporation (Solar) purchased a proprietary membership share covered by Membership Certificate No. 8 from the Mabuhay Golf Club, Inc. for P500,000.00. On December 27, 2012, it transferred the same to David, its American consultant, to enable him to avail of the facilities of the Club. David executed a Deed of Declaration of Trust and Assignment of Shares wherein he acknowledged the absolute ownership of Solar over the share; that the assignment was without any consideration; and that the share was placed in his name because the Club required it to be done. In 2013, the value of the share increased to P800,000.00.**

**Is the said assignment a "gift" and, therefore, subject to gift tax? Explain. (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

No. The transfer is not a taxable donation because there is no divestment of ownership by the transferor. The purpose of the transfer is simply to allow David to avail of the facilities of the Club. The execution of a "Deed of Declaration of Trust and Assignment of Shares" where the absolute ownership by Solar of the share is acknowledged would show that there is no relinquishment of ownership by Solar. The transfer being merely transfer in form but not in substance, the same is not ,subject to gift tax.

**ALTERNATIVE ANSWER:**

The assignment is a "gift" subject to gift tax. The absence of donative intent does not exempt the sales of stock transaction from donor's tax since Sec. 100 of the NIRC categorically states that the amount by which the fair market value of the property exceeded the value of the consideration shall be deemed a gift. Thus, even if there is no actual donation, the difference in price is considered a donation by fiction of law *(Philam Life and General insurance Co. y Sec of Finance and CIR, G.R. No. 210987, November 24, 2014, 741 SCRA 579).*

**Don Sebastian, single but head of the family, Filipino, and resident of Pasig City, died intestate on November 15, 2009.**

**He left the following properties and interests:**

| | |
|---|---|
| **House and lot (family home) in Pasig** | **P 800,000** |
| **Vacation house and lot in Florida, USA** | **1,500,000** |
| **Agricultural land in Naic, Cavite which he inherited from his father** | **2,000,000** |
| **Car which is being used by his brother in Cavite** | **500,000** |
| **Proceeds of life insurance where he named his estate as irrevocable beneficiary** | **1,000,000** |
| **Household furnitures and appliances** | **1,000,000** |
| **Claims against a cousin who has assets of P10,000 and liabilities of PI00,000** | **100,000** |
| **Shares of stock in ABC Corp, a domestic enterprise** | **100,000** |
| **The expenses and charges on the estate are as follows:** | |
| **Funeral Expenses** | **P250,000** |
| **Legal fees for the settlement of the estate 500,000** | |
| **Medical expenses of last illness** | **600,000** |
| **Claims against the estate** | **300,000** |

**The compulsory heirs of Don Sebastian approach you and seek your assistance in the settlement of his estate for which they have agreed to the above-stated professional fees. Specifically, they request you to explain and discuss with them the following questions. You oblige:**

**SUGGESTED ANSWER:**

If the renunciation is a general renunciation such that the share of the heir who waives his right to the inheritance goes to the other co-heirs in accordance with their respective interest in the inheritance, the law on accretion applies and the property waived is considered to pass through the other co-heirs by inheritance; hence, it has no tax implication. Undoubtedly, when the compulsory heir renounced his share in the inheritance, he did not donate the property which had never become his. Such being the case, the renunciation is not subject to the donor's tax.

If it is not a general renunciation in favor of the other co-heirs, the heir renouncing his right is considered to have made a donation and the renunciation is subject to donor’s tax. In both cases, however, the renunciation has no tax implication to the other co-heirs (BIR Ruling No. DA-(DT-039) 396-09, dated July 23, 2009).

b. Condonation/remission of debt

7. Transfer for less than adequate and full consideration

8. Classification of donor

**Miguel, a citizen and resident of Mexico, donated US$1,000.00 worth of stocks in Barack Motors Corporation, a Mexican company, to his legitimate son, Miguelito, who is residing in the Philippines and about to be married to a Filipino girlfriend. Mexico does not impose any transfer tax of whatever nature on all gratuitous transfers of property.**

**[b] Is Miguel entitled to the rule of reciprocity in order to be exempt from the Philippine donor's tax? Why or why not? (3%)**

**SUGGESTED ANSWER:**

No. The donation is not subject to the Philippine donor's tax because the donor is a non-resident alien and the property donated is a property not situated in the Philippines. The rule of reciprocity applies only if the property transferred by a non- resident alien is an intangible personal property situated in the Philippines. This is designed to reciprocate the exemption from donor's tax granted by a foreign country to Filipinos who are not residing thereat. (Section 104, NIRC). (BAR 2009)

9. Determination of gross gift

**Mr. L owned several parcels of land and he donated a parcel each to his two children. Mr. L acquired both parcels of land in 1975 for Il200,000.00. At the time of donation, the fair market value of the two parcels of land, as determined by the CIR, was 112,300,000.00; while the fair market value of the same properties as shown in the schedule of values prepared by the City Assessors was 112,500,000.00. What is the proper valuation of Mr. L's gifts to his children for purposes of computing donor's tax?** (2015 Bar Question)

**SUGGESTED ANSWER:**

The valuation of Mr. L's gift to his children is the fair market value (FMV) of the property at the time of donation. It is the higher of the FMV as determined by the Commissioner or the FMV as shown in the schedule of values fixed by the provincial or city assessors. In this case, for the purpose of computing donor's tax, the proper valuation is the value prepared by the City Assessors amounting to P2,500,00.00 because it is higher than the FMV determined by the CIR.

10. Composition of gross gift

**In May 2010, Mr. And Mrs. Melencio Antonio donated a house and lot with a fair market value of P10 Million to their sob, Roberto, who is to be married during the same year to Josefina Angeles. Which statement below is INCORRECT?** (2012 BAR)

**a) There are four (4) donations made – two (2) donations are made by Mr. Melencio Antonio to Roberto and Josefina, and two (2) donations are made by Mrs. Antonio;**
**b) The four (4) donations are made by the Spouses Antonio to members of the family, hence, subject to the graduated donor's tax rates (2%-15%);**
**c) Two (2) donations are made by the spouses to members of the family, while two (2) other donations are made to strangers;**
**d) Two (2) donations made by the spouses to Roberto are entitled to deduction from the gross gift as donation *proper nuptias.***

**SUGGESTED ANSWER:**

d) Two (2) donations made by the spouses to Roberto are entitled to deduction from the gross gift as donation *proper nuptias.*
Section 101, NIRC; Tang Ho v. Court of Appeals.

11. Valuation of gifts made in property

**The spouses Helena and Federico wanted to donate a parcel of land to their son Dondon who is getting married in December, 2011. The parcel of land has a zonal valuation of P420,000.00. What is the most efficient mode of donating the property?** (2011 Bar Question)

**(A) The spouses should first donate in 2011 a portion of the property valued at P20,000.00 then spread the P400,000.00 equally for 2012, 2013, 2014 and 2015.**
**(B) Spread the donation over a period of 5 years by the spouses donating P100,000.00 each year from 2011 to 2015.**
**(C) The spouses should each donate a P110,000.00 portion of the value of the property in 2011 then each should donate P100,000.00 in 2012.**
**(D) The spouses should each donate a P100,000.00 portion of the value of the property in 2011, and another P100,000.00 each in 2012. Then, in 2013, Helena should donate the remaining P20,000.00.**

**SUGGESTED ANSWER:**

(C) The spouses should each donate a P110,000.00 portion of the value of the property in 2011 then each should donate P100,000.00 in 2012.

12. Tax credit for donor's taxes paid in a foreign country
13. Exemptions of gifts from donor's tax

CMI School, Inc., a non-stock, non-profit corporation, donated its three parcels of idle land situated in the Municipality of Cuyapo, Nueva Ecija to SLC University, another non-stock, non-profit corporation, in recognition of the latter's contribution to and participation in the spiritual and educational development of the former.

**a. Is CMI School, Inc., liable for the payment of donor's tax? Explain your answer. (2.5%) (2017 BAR)**

**SUGGESTED ANSWER:**

a. No. Gifts made by a resident in favor of an educational corporation or institution shall be exempt from donor's tax. (Section 101(A)(3), 1997 NIRC, as amended) Considering that SLC University is a non-stock, non- profit corporation, and the property donated was made by a resident, then, such exemption under the law applies to the present case.

**b. If SLC University later sells the three parcels of idle land to Puregold Supermarket, Inc., a stock corporation, will SLC University be liable for capital gains tax? Explain your answer. (3%) (2017 BAR)**

**SUGGESTED ANSWER:**

b. Yes. The gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets shall be subject to capital gains tax. (Section 27(D)(5), 1997 NIRC, as amended). Likewise, Section 30 of the NIRC subjects to income tax (capital gains tax) all income from properties, real or personal, or from any activity conducted for profit, irrespective of the disposition of the income, by all tax exempt corporations.

**c. If SLC University donates the three parcels of idle land in favor of the Municipality of Cuyapo, Nueva Ecija, will SLC University be liable for donor's tax? Explain your answer. (2.5%) (2017 BAR)**

**SUGGESTED ANSWER:**

c. No. Gifts made by a resident to any political subdivision of the National Government shall be exempt from donor's tax. (Section 101(A)(2), 1997 NIRC, as amended)

**Exempted from donor's taxation are gifts made:** (2011 Bar Question)
**(A) for the use of the barangay.**
**(B) in consideration of marriage.**
**(C) to a school which is a stock corporation.**
**(D) to a for-profit government corporation.**

**SUGGESTED ANSWER:**

(A) for the use of the barangay.

**Levox Corporation wanted to donate P5 million as prize money for the world**

**professional billiard championship to be held in the Philippines. Since the Billiard Sports Confederation of the Philippines does not recognize the event, it was held under the auspices of the International Professional Billiards Association, Inc. Is Levox subject to the donor's tax on its donation?** (2011 Bar Question)

**(A) No, so long as the donated money goes directly to the winners and not through the association.**
**(B) Yes, since the national sports association for billiards does not sanction the event.**
**(C) No, because it is donated as prize for an international competition under the billiards association.**
**(D) Yes, but only that part that exceeds the first P100,000.00 of total Levox donations for the calendar year.**

**SUGGESTED ANSWER:**

(B) Yes, since the national sports association for billiards does not sanction the event.

**A non-stock, non-profit school always had cash flow problems, resulting in failure to recruit well- trained administrative personnel to effectively manage the school. In 2010, Don Leon donated P100 million pesos to the school, provided the money shall be used solely for paying the salaries, wages, and benefits of administrative personnel. The donation represents less than 10% of Don Leon's taxable income for the year. Is he subject to donor's taxes?** (2011 Bar Question)

**(A) No, since the donation is actually, directly, and exclusively used for educational purposes.**
**(B) Yes, because the donation is to be wholly used for administration purposes.**
**(C) Yes, since he did not obtain the requisite NGO certification before he made the donation.**
**(D) No, because the donation does not exceed 10% of his taxable income for 2010.**

**SUGGESTED ANSWER:**

(B) Yes, because the donation is to be wholly used for administration purposes.

**On January 10, 2011, Maria Reyes, single-mother, donated cash in the amount of P50,000.00 to her daughter Cristina, and on December 20, 2011, she donated another P50,000.00 to Cristina. Which statement is correct?** (2012 BAR)

**a) Maria Reyes is subject to donor's tax in 2011 because gross gift is P100,000.00;**
**b) Maria Reyes is exempt from donor's tax in 2011 because gross gift is P100,000.00;**
**c) Maria Reyes is exempt from donor's tax in 2011 only to the extent of P50,000.00;**

**d) Maria Reyes is exempt from donor's tax in 2011 because the donee is minor.**

**SUGGESTED ANSWER:**

b) Maria Reyes is exempt from donor's tax in 2011 because gross gift is P100,000.00 Section 99(A), NIRC.

**Mr. De Sarapen is a candidate in the upcoming Senatorial elections. Mr. De Almacen, believing in the sincerity and ability of Mr. De Sarapen to introduce much needed reforms in the country, contributed P500,000.00 in cash to the campaign chest of Mr. De Sarapen. In addition, Mr. De Almacen purchased tarpaulins, t-shirts, umbrellas, caps and other campaign materials that he also donated to Mr. De Sarapen for use in his campaign. Is the contribution of cash and campaign materials subject to donor's tax?** (2014 Bar Question)

**SUGGESTED ANSWER :**

The answer must be qualified. Section 99(C) of the NIRC explicitly provides that any contribution in cash or in kind to any candidate, political party or coalition of parties for campaign purposes shall be governed by the Election Code, as amended. On the other hand, Section 13 of the Republic Act No. 7166 specifically states that any provision of law to the contrary notwithstanding, any contribution in cash or kind to any candidate or political party or coalition of parties for campaign purposes, duly reports to the Commission on Elections (COMELEC) shall not be subject to the payment of any gift tax.

Thus, if *Mr. De Almacen* reported his campaign contributions of Php 500,000.00 in cash, tarpaulins, t-shirts, umbrellas, caps, and other campaign materials to the COMELEC, then the BIR cannot impose donor's tax on such contributions. Conversely, if *Mr. De Almacen* failed to report these campaign contributions to the COMELEC, such contributions would be subject to donor's tax.

**Miguel, a citizen and resident of Mexico, donated US$1,000.00 worth of stocks in Barack Motors Corporation, a Mexican company, to his legitimate son, Miguelito, who is residing in the Philippines and about to be married to a Filipino girlfriend. Mexico does not impose any transfer tax of whatever nature on all gratuitous transfers of property.**

**Is Miguel entitled to claim a dowry exclusion? Why or why not? (3%)**

**SUGGESTED ANSWER:**

Miguel, a non-resident alien, is not allowed any dowry exclusion. The dowry applies only to a donor who is either a citizen or resident of the Philippines (Section 101(AX1), NIRC). (BAR 2009)

14. Person liable

**The spouses Jun and Elvira Sandoval purchased a piece of land for P5,000,000 and included their two (2) minor children as co-purchasers in the Deed of Absolute Sale. The Commissioner of Internal Revenue (CIR) ruled that there was an implied donation and assessed donors' taxes against the spouses.**

**Rule on the CIR's action. (1%)**(2013 Bar Question)

**(A) The CIR is wrong; a donation must be express.**
**(B) The CIR is wrong; financial capacity is not a requirement for a valid sale.**
**(C) The CIR is correct; the amount involved is huge and ultimately ends up with the children.**
**(D) The CIR is correct; there was animus donandi since the children had no financial capacity to be co-purchasers.**

**SUGGESTED ANSWER:**

**(D) The CIR is correct; there was animus donandi since the children had no financial capacity to be co-purchasers.**

The present case is similar to the case of *Sps. Hordon H. Evono and Maribel C. Evono v. CIR, et al.,* [CTA EB No. 705, (CTA Case No. 7573),June 4, 2012]. The CTA held that the inclusion of the minor children's names in the transfer of the titles/properties shall be deemed a donation or gift from their parents. This is so because the minor children, at an early age, have no source of income. There is a clear *animus donandi*. Therefore, the imposition of donor's tax is in accordance with Section 98 of the NIRC.

(**Note:**Although the cited case was only decided by the CTA, it provides an authoritative insight on the answer to the given problem, considering that there is no exact applicable law and jurisprudence on the matter.)

15. Tax basis

**Celia donated P110,000.00 to her friend Victoria who was getting married. Celia gave no other gift during the calendar year. What is the donor's tax implication on Celia's donation?** (2011 Bar Question)

**(A) The P100,000.00 portion of the donation is exempt since given in consideration of marriage.**
**(B) A P10,000.00 portion of the donation is exempt being a donation in consideration of marriage.**
**(C) Celia shall pay a 30% donor's tax on the P110,000.00 donation.**
**(D) The P100,000.00 portion of the donation is exempt under the rate schedule for donor's tax.**

**SUGGESTED ANSWER:**

(C) Celia shall pay a 30% donor's tax on the P110,000.00 donation.

V. Value-Added Tax (VAT)
1. Concept
2. Characteristics/Elements of a VAT-Taxable transaction
3. Impact of tax
4. Incidence of tax
5. Tax credit method
6. Destination principle
7. Persons liable

**On September 17, 2015, Data Realty, Inc., a real-estate corporation duly organized and existing under Philippine law, sold to Jenny Vera a condominium unit at Freedom Residences in Malabon City with an area of 32.31 square meters for a contract price of P4,213,000. The condominium unit had a zonal value amounting to P2,877,000 and fair market value amounting to P550,000.**

**a. Is the transaction subject to value-added tax and documentary stamp tax? Explain your answer. (3%)**

**SUGGESTED ANSWER:**

a. Yes. As to the VAT liability, sale of real properties held primarily for sale to customer or held for lease in the ordinary course of trade or business is subject to VAT. (Section 106 (A)(1)(a), NIRC). Further, the contract price, which is the highest compared to the zonal value and the fair market value, is beyond the transactional threshold amount for residential dwellings thereby making the sale transaction VATable. As to the DST liability, all conveyances of real property for consideration are subject to DST. (Section 196, NIRC).

**b. Would your answer be the same if the propety was sold by a bank in a foreclosure sale? Explain your answer. (3%)**

**SUGGESTED ANSWER:**

b. No, the sale made by the bank is exempt from VAT. Banks are exempt from VAT because they are subject to percentage tax under Title V of the NIRC. (Section 109 in relation to Section 121, NIRC). However, the sale will still be subject to DST because conveyances of real property for a consideration are subject to DST. (Section 196, NIRC).

**An importer of flowers from abroad in 2011:** (2012 BAR)
**a) Is liable for VAT, if it registers as a VAT person;**

**b) Is exempt from VAT, because the goods are treated as agricultural products;**
**c) Is exempt from VAT, provided that his total importation of flowers does not exceed P1.5 Million;**
**d) Is liable for VAT, despite the fact that it did not register as a VAT person and its total annual sales of flowers do not exceed P1.5 Million.**

**SUGGESTED ANSWER:**

d) Is liable for VAT, despite the fact that it did not register as a VAT person and its total annual sales of flowers do not exceed P1.5 Million
Section 107, NIRC.

**MBM Corporation is the owner-operator of movie houses in Cavite. During the year 2010, it received a total gross receipts of P20 Million from the operation of movies. It did not register as a VAT person. Which statement below is correct?** (2012 BAR)

**a) MBM Corporation is exempt from the 12% VAT, but liable for the 20% amusement tax on admissions under the Local Government Code;**
**b) MBM Corporation is both liable for the 12% VAT and 20% amusement tax on admissions;**
**c) MBM Corporation is both exempt from the 12% VAT and 20% amusement tax on admissions; d) MBM Corporation is liable for the 12% VAT, but exempt from the 20% amusement tax on admissions.**

**SUGGESTED ANSWER:**

a) MBM Corporation is exempt from the 12% VAT, but liable for the 20% amusement tax on admissions under the Local Government Code
CIR v. SM Prime Holdings Inc., G.R. No. 183505, February 26, 2010.

**The public market vendor below, who is not a VAT-registered person is liable to VAT in 2010, if:** (2012 BAR)

**a) She sells raw chicken and meats and her gross sales during the year is P2 Million;**
**b) She sells vegetables and fruits in her stall and her gross sales during the year is P1 Million;**
**c) She sells canned goods, processed coconut oils, and cut flowers in her stall and her gross sales during the year is P2.5 Million;**
**d) She sells live fish, shrimps, and crabs and her gross sales during the year is P5 Million.**

**SUGGESTED ANSWER:**

c) She sells canned goods, processed coconut oils, and cut flowers in her stall and her

gross sales during the year is P2.5 Million
Section 105 & 109, NIRC.

**Melissa inherited from her father a 300-square-meter lot. At the time of her father's death on March 14, 1995, the property was valued at P720,000.00. On February 28, 1996, to defray the cost of the medical expenses of her sick son, she sold the lot for P600.000.00, on cash basis. The prevailing market value of the property at the time of the sale was P3.000.00 per square meter.**

**Is Melissa liable to pay Value Added Tax (VAT) on the sale of the property? If so, how much and why? If not, why not? (4%)**

**SUGGESTED ANSWER:**

No, Melissa is not liable to pay the VAT because she is not in the real estate business. A sale, of real property not in the course of trade or business is not subject to VAT (Section 105 and Section 109(1)(P), NIRC). (BAR 2009)

8. VAT on sale of goods or properties

**Are the following transactions subject to VAT? If yes, what is the applicable rate for each transaction. State the relevant authority/ies for your answer.**

**Sale of orchids by a flower shop which raises its flowers in Tagaytay. (3%)**

**SUGGESTED ANSWER:**

The sale of orchids is subject to VAT at 12%. This is a sale of agricultural non-food product in its original state which is no longer one of the exempt transactions. (Sec. 109, NIRC, as amended by RA No. 9337).

**Melissa inherited from her father a 300-square-meter lot. At the time of her father's death on March 14, 1995, the property was valued at P720,000.00. On February 28, 1996, to defray the cost of the medical expenses of her sick son, she sold the lot for P600.000.00, on cash basis. The prevailing market value of the property at the time of the sale was P3.000.00 per square meter.**

**Is Melissa liable to pay Value Added Tax (VAT) on the sale of the property? If so, how much and why? If not, why not? (4%)**

**SUGGESTED ANSWER:**

No. The real property sold, being in the nature of a capital asset, is not subject to VAT. The sale is subject to VAT only if the real property sold is held primarily for sale to customers or held for lease in the ordinary course of trade or business. A real property

classified as a capital asset does not include a real property held for sale or for lease, hence, its sale is not subject to VAT (Section 39 and Section 106, NIRC). (BAR 2009)

a. Requisites of taxability of sale of goods or properties

**Under the VAT system, there is no cascading because the tax itself is not again being taxed. However, in determining the tax base on sale of taxable goods under the VAT system:** (2012 BAR)

**a) The professional tax paid by the professional is included in gross receipts;**
**b) The other percentage tax (e.g., gross receipts tax) paid by the taxpayer is included in gross selling price;**
**c) The excise tax paid by the taxpayer before withdrawal of the goods from the place of production or from customs custody is included in the gross selling price;**
**d) The documentary stamp tax paid by the taxpayer is included in the gross selling price or gross receipts.**

**SUGGESTED ANSWER:**

c) The excise tax paid by the taxpayer before withdrawal of the goods from the place of production or from customs custody is included in the gross selling price
Section 106, NIRC; RR No. 16-2005.

**Which transaction below is subject to VAT?** (2012 BAR)

**a) Sale of vegetables by a farmer in Baguio City to a vegetable dealer;**
**b) Sale of vegetables by a vegetable dealer in Baguio City to another vegetable dealer in Quezon City;**
**c) Sale of vegetables by the QC vegetable dealer to a restaurant in Manila;**
**d) Sale of vegetables by the restaurant operator to its customers.**

**SUGGESTED ANSWER:**

d) Sale of vegetables by the restaurant operator to its customers

Section 109, NIRC.

*[Note: This is not absolutely true because a restaurant may sell the vegetables in their original state which will be exempt from VAT under Section 109(A), irrespective of who is the seller.]*

**Masarap Kumain, Inc. (MKI) is a Value-Added Tax (VAT)-registered company which has been engaged in the catering business for the past 10 years. It has invested a substantial portion of its capital on flat wares, table linens, plates, chairs, catering equipment, and delivery vans. MKI sold its first delivery van,**

**already 10 years old and idle, to Magpapala Gravel and Sand Corp. (MGSC), a corporation engaged in the business of buying and selling gravel and sand. The selling price of the delivery van was way below its acquisition cost. Is the sale of the delivery van by MKI to MGSC subject to VAT?** (2014 Bar Question)

**SUGGESTED ANSWER :**

Yes. The sale of the delivery van by *MKI* to *MGSC* was incidental to its trade or business, and therefore subject to VAT. Pursuant to the case of Mindanao Geothermal Partnership II v. Commissioner of Internal Revenue (G.R. No. 193301, 194637, March 11, 2013), an isolated transaction may be considered a transaction incidental to the taxpayer's.

9. Zero-rated sales of goods or properties, and effectively zero-rated sales of goods or properties

10. Transactions deemed sale

a. Transfer, use or consumption not in the course of business of goods/properties originally intended for sale or use in the course of business
b. Distribution or transfer to shareholders, investors or creditors
c. Consignment of goods if actual sale not made within 60 days from date of consignment
d. Retirement from or cessation of business with respect to inventories on hand

11. Change or cessation of status as VAT-registered person
a. Subject to VAT
i. Change of business activity from VAT taxable status to VAT-exempt status
ii. Approval of request for cancellation of a registration due to reversion to exempt status
iii. Approval of request for cancellation of registration due to desire to revert to exempt status after lapse of 3 consecutive years

b. Not subject to VAT
i. Change of control of a corporation
ii. Change in the trade or corporate name
iii. Merger or consolidation of corporations

12. VAT on importation of goods

**Which of the following transactions is subject to Value-Added Tax (VAT)?** (2014 Bar Question)
**(A) Sale of shares of stock-listed and traded through the local stock exchange**
**(B) Importation of personal and household effects belonging to residents of the Philippines returning from abroad subject to custom duties under the Tariff**

**and Customs Code**

**(C) Services rendered by individuals pursuant to an employer-employee relationship**

**(D) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority**

**SUGGESTED ANSWER :**

B. Importation of personal and household effects belonging to residents of the Philippines returning from abroad, subject to custom duties under the Tariff and Customs Code

a. Transfer of goods by tax exempt persons

**Which importation in 2011 is subject to VAT?** (2012 BAR)

**a) Importation of fuels by a person engaged in international shipping worth P20 Million;**

**b) Importation of raw, unprocessed, refrigerated Kobe beef from Japan by a beef dealer for sale to hotels in Makati City with a fair market value of P10 Million;**

**c) Importation of wines by a wine dealer with a fair market value of P2 million for sale to hotels in Makati City;**

**d) Importation of books worth P5 Million and school supplies worth P1.2 million.**

**SUGGESTED ANSWER:**

c) Importation of wines by a wine dealer with a fair market value of P2 million for sale to hotels in Makati City

Sections 107 & 109, NIRC.

*[Note: d) may also be a correct choice because only importation of books is exempt from VAT. The importation of school supplies is not exempt.]*

13. VAT on sale of service and use or lease of properties

a. Requisites for taxability

**A VAT-registered contractor performed services for his customer in 2010 and billed him P11.2 Million, broken down as follows: P10 Million – cost of services, plus P1.2 Million, 12% VAT. Of the contract price of P10 Million, only P8 Million plus VAT thereon was received from the customer in 2010, and the balance of P4 Million plus VAT was received by the contractor in 2011. How much is the taxable gross receipts of the contractor for 2010, for VAT purposes?** (2012 BAR)

**a) P10 Million, the total cost of services performed in 2010;**

**b) P8 Million, the amount received from the customer in 2010;**

**c) P8 Million plus VAT received from the customer in 2010;**
**d) P11.2 Million, the total cost of services performed plus 12% VAT.**

**SUGGESTED ANSWER:**

b) P8 Million, the amount received from the customer in 2010
Section 108, NIRC.

**A hotel operator that is a VAT-registered person and who leases luxury vehicles to its hotel customers is:** (2012 BAR)
**a) Subject to the 3% common carriers tax and 12% VAT;**
**b) Subject to the 3% common carriers tax only;**
**c) Subject to the 12% VAT only;**
**d) Exempt from both the 3% common carriers tax and 12% VAT.**

**SUGGESTED ANSWER:**

c) Subject to the 12% VAT only
Section 108, NIRC.

**A pawnshop shall now be treated, for business tax purposes:** (2012 BAR)
**a) As a lending investor liable to the 12% VAT on its gross receipts from interest income and from gross selling price from sale of unclaimed properties;**
**b) Not as a lending investor, but liable to the 5% gross receipts tax imposed on a non-bank financial intermediary under Title VI (Other Percentage Taxes);**
**c) As exempt from 12% VAT and 5% gross receipts tax; d) As liable to the 12% VAT and 5% gross receipts tax.**

**SUGGESTED ANSWER:**

b) Not as a lending investor, but liable to the 5% gross receipts tax imposed on a non-bank financial intermediary under Title VI (Other Percentage Taxes)
RR No. 10-2004; H. Tambunting Inc. v. CIR, G.R. No. 172394, October 13, 2010.

**The Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 65-2012 imposing Value-Added Tax (VAT) on association dues and membership fees collected by condominium corporations from its member condominium-unit owners. The RMC's validity is challenged before the Supreme Court (SC) by the condominium corporations.**

**The Solicitor General, counsel for BIR, claims that association dues, membership fees, and other assessment/charges collected by a condominium corporation are subject to VAT since they constitute income payments or compensation for the beneficial services it provides to its members and tenants.**

**On the other hand, the lawyer of the condominium corporations argues that such**

**dues and fees are merely held in trust by the condominium corporations exclusively for their members and used solely for administrative expenses in implementing the condominium corporations' purposes. Accordingly, the condominium corporations do not actually render services for a fee subject to VAT.**

**Whose argument is correct? Decide.** (2014 Bar Question)

**SUGGESTED ANSWER :**

The argument of the condominium corporation is correct. The association dues should not be subject to VAT because the condominium corporation does not realize any gain or profit. They merely hold the fees in trust for administrative expenses. This, it does not form part of the gross income of the corporation, and consequently, is not subject to VAT. (RTC Resolution SCA No.12-1236 on RMC 65- 2012, Petition for Declaratory Relief).

14. Zero-rated sale of services

**SMZ, Inc., is a VAT-registered enterprise engaged in the general construction business. HP International contracts the services of SMZ, Inc. to construct HP International's factory building located in the Laguna Techno Park, a special economic zone. HP International is registered with the Philippine Economic Zone Authority (PEZA) as an ecozone export enterprise, and, as such, enjoys income tax holiday pursuant to the Special Economic Zone Act of 1995.**

**SMZ, Inc., files an application with the Bureau of Internal Revenue (BIR) for the VAT zero-rating of its sale of services to HP International. However, the BIR denies SMZ, Inc.'s application on the ground that HP International already enjoys income tax holiday.**

**Is the BIR correct in denying SMZ, Inc.'s application? Explain your answer. (6%) (2017 BAR)**

**SUGGESTED ANSWER:**

No. All sales of goods, properties, and services made by a VAT- registered supplier from the Customs Territory to an ecozone enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration. *(Coral Bay Nickel Corporation v. CIR, G.R. No. 190506, June 13, 2016, citing Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc., G.R. No. 350154, August 9, 2005, 466 SCRA 221)*

Moreover, under Section 108 (B)(3), of the 1997 NIRC as amended, services rendered to persons or entities whose exemption under special laws effectively subjects the supply of such services to zero percent (0%) rate are considered zero-rated.

Considering the law does not provide for any additional qualification or disqualification, the BIR cannot deny the application on the ground that HP International already enjoys income tax holiday.

An administrative agency may not enlarge, alter or restrict a provision of law. It cannot add to the requirements provided by law. To do so constitutes lawmaking, which is generally reserved for Congress. *(Soriano v. Secretary of Finance, et al., G.R. No. 184450, 184508, 184538, 185234, January 24, 2017)*

**ALTERNATIVE ANSWER:**

The BIR is wrong. Under Sec 108(B)(3) of the NIRC, the sale is effectively zero-rated and there is no need to file an application for zero-rating with the BIR. The BIR in pointing out that HP International enjoys income tax holiday is of no moment because a sale of services to an ecozone enterprises by a supplier from the customs territory is considered as an effectively zero-rated sale of service in view of the exemption enjoyed by the PEZA enterprise from indirect taxes.

**Pursuant to Sec. 11 of the "Host Agreement" between the United Nations and the Philippine government, it was provided that the World Health Organization (WHO), "its assets, income and other properties shall be : a) exempt from all direct and indirect taxes." Precision Construction Corporation (PCC) was hired to construct the WHO Medical Center in Manila. Upon completion of the building, the BIR assessed a 12% VAT on the gross receipts of PCC derived from the construction of the WHO building. The BIR contends that the 12% VAT is not a direct nor an indirect tax on the WHO but a tax that is primarily due from the contractor and is therefore not covered by the Host Agreement. The WHO argues that the VAT is deemed an indirect tax as PCC can shift the tax burden to it. Is the BIR correct? Explain. (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

No, Since World Health Organization (WHO), the contractee, is exempt from direct and indirect taxes pursuant to an international agreement where the Philippines is a signatory, the exemption from indirect taxes should mean that the entity or person exempt is the contactor itself because the manifest intention of the agreement is to exempt the contractor so that no tax may be shifted to the contractee *(CIR v. John Gotamco & Sons, Inc., G.R. No. L-31092, February 24,1987,148 SCRA 36).* The immunity of WHO from indirect taxes extends to the contractor by treating the sale of service effectively zero-rated when the law provided that— "services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such service to zero percent (0%) rate" (Section 108(B) 3 C), Accordingly, the BIR is wrong in assessing the 12% VAT from the contractor, Precision Construction Corporation.

**Foster Corporation (FC) is a Singapore-based foreign corporation engaged in construction and installation projects. In 2010, Global Oil Corporation (GOC), a domestic corporation engaged in the refinery of petroleum products, awarded an anti-pollution project to Foster Corporation, whereby FC shall design, supply machinery and equipment, and install an anti-pollution device for GOC's refinery in the Philippines, provided that the installation part of the project may be sub-contracted to a local construction company. Pursuant to the contract, the design and supply contracts were done in Singapore by FC, while the installation works were sub-contracted by the FC with the Philippine Construction Corporation (PCC), a domestic corporation. The project with a total cost of P100 Million was completed in 2011 at the following cost components: (design – P20Million; machinery and equipment – P50 Million; and installation –P30 Million). Assume that the project was 40% complete in 2010 and 100% complete in 2011, based on the certificates issued by the certificates issued by the architects and engineers working on the project. GOC paid FC as follows: P60 Million in 2010 and P40 Million in 2011, and FC paid PCC ion foreign currency through a Philippine bank as follows: P10 Million in 2010 and P20 Million in 2011.**

**Is PCC, which adopted the percentage of completion method of reporting income and expenses, liable to value added tax in 2010 and in 2011. Explain your answer. (2012 BAR)**

**Suggested Answer:**
YES. PCC is liable to the VAT as seller of services for a fee. However, the sale of services to FC is subject to VAT at zero percent rate. Services rendered to a person engaged in business outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed paid in foreign currency inwardly remitted through the banking system are zero-rated sales of services (*Sec. 108(B)(2), NIRC*).

**Sale of orchids by a flower shop which raises its flowers in Tagaytay. (2010 Bar Question)**

**SUGGESTED ANSWER:**

The sale of orchids is subject to VAT at 12%. This is a sale of agricultural non-food product in its original state which is no longer one of the exempt transactions.

15. VAT exempt transactions
a. VAT exempt transactions, in general
b. Exempt transaction, enumerated

**Except for one transaction, the rest are exempt from value added tax. Which one is VAT taxable?** (2012 BAR)

**a) Sales of chicken by a restaurant owner who did not register as a VAT person and whose gross annual sales is P1.2 Million;**

**b) Sales of copra by a copra dealer to a coconut oil manufacturer who did not register as a VAT person and whose gross annual sales is P5 Million;**
**c) Gross receipts of CPA during the year amounted to P1 Million; the CPA registered as a VAT person in January 2011, before practicing his profession;**
**d) Sales of a book store during the year amounted to P10 Million; it did not register as a VAT person with the BIR.**

**SUGGESTED ANSWER:**

c) Gross receipts of CPA during the year amounted to P1 Million; the CPA registered as a VAT person in January 2011, before practicing his profession
Section 108, NIRC.

**A lessor or real property is exempt from value added tax in one of the transactions below. Which one is it?** (2012 BAR)

**a) Lessor leases commercial stalls located in the Greenhills Commercial Center to VAT- registered sellers of cell phones; lessor's gross rental during the year amounted to P12 Million;**
**b) Lessor leases residential apartment units to individual tenants for P10,000.00 per month per unit; his gross rental income during the year amounted to P2 Million;**
**c) Lessor leases commercial stalls at P10,000.00 per stall per month and residential units at P15,000.00 per unit per month; his gross rental income during the year amounted to P3 Million; d) Lessor leases two (2) residential houses and lots at P50,000.00 per month per unit, but he registered as a VAT person.**

**SUGGESTED ANSWER:**

b) Lessor leases residential apartment units to individual tenants for P10,000.00 per month per unit; his gross rental income during the year amounted to P2 Million
Section 109(Q), NIRC.

**IBP Bank extended loans to debtors during the year, with real properties of the debtors being used as collateral to secure the loans. When the debtors failed to pay the unpaid principal and interests after several demand letters, the bank foreclosed the same and entered into contracts of lease with tenants. The bank is subject to the tax as follows: (2012 BAR)**
**a) 12% VAT on the rental income, but exempt from the 7% gross receipts tax;**
**b) 7% gross receipts tax on the rental income, but exempt from VAT;**
**c) Liable to both the 12% VAT and 7% gross receipts tax;**
**d) Exempt from both the 12% VAT and 7% gross receipts tax.**

**SUGGESTED ANSWER:**

b) 7% gross receipts tax on the rental income, but exempt from VAT
Section 121, NIRC.

**Which statement is correct? A bar review center owned and operated by lawyers is: (2012 BAR)**

**a) Exempt from VAT, regardless of its gross receipts during the year because it is an educational center;**
**b) Exempt from VAT, provided that its annual gross receipts do not exceed P1.5 Million in 2011;**
**c) Subject to VAT, regardless of its gross receipts during the year;**
**d) Subject to VAT, if it is duly accredited by TESDA.**

**SUGGESTED ANSWER:**

b) Exempt from VAT, provided that its annual gross receipts do not exceed P1.5 Million in 2011
Section 109(V), NIRC.

**Emiliano Paupahan is engaged in the business of leasing out several residential apartment units he owns. The monthly rental for each unit ranges from P8,000.00 to PI0,000.00. His gross rental income for one year is PI,650,000.00. He consults you on whether it is necessary for him to register as a VAT taxpayer. What legal advice will you give him, and why? (4%)**

**SUGGESTED ANSWER:**

I will advise Emiliano ttyat he is not required to register as a VAT taxpayer. His transactions of leasing residential units for an amount not exceeding P10,000.00 per unit per month are exempt from VAT irrespective of the aggregate amount of rentals received annually (Section 109(1X0,b NIRC). (BAR 2009)

16. Input tax and output tax, defined

17. Sources of input tax
   a. Purchase or importation of goods
   b. Purchase of real properties for which a VAT has actually been paid
   c. Purchase of services in which VAT has actually been paid
   d. Transactions deemed sale
   e. Presumptive input
   f. Transitional input

18. Persons who can avail of input tax credit

**Claim for tax credit or refund of excess input tax is available only to:** (2012 BAR)

**a) A VAT-registered person whose sales are made to embassies of foreign governments and United Nations agencies located in the Philippines without**

**the BIR approval of the application for zero-rating;**
**b) Any person who has excess input tax arising from local purchases of taxable goods and services;**
**c) A VAT-registered person whose sales are made to clients in the Philippines;**
**d) A VAT-registered person whose sales are made to customers outside the Philippines and who issued VAT invoices or receipts with the words "ZERO RATED SALES" imprinted on the sales invoices or receipts.**

**SUGGESTED ANSWER:**

d) A VAT-registered person whose sales are made to customers outside the Philippines and who issued VAT invoices or receipts with the words "ZERO RATED SALES" imprinted on the sales invoices or receipts. *(KepcoPhils. Corp. v. CIR, G.R. No. 179961, January 31, 2011.)*

19. Determination of output/input tax; VAT payable; excess input tax credits

a. Determination of output tax
b. Determination of input tax creditable
c. Allocation of input tax on mixed transactions
d. Determination of the output tax and VAT payable and computation of VAT payable or excess tax credits

20. Substantiation of input tax credits

**Input tax is available to a VAT-registered buyer, provided that:** (2012 BAR)
**a) The seller is a VAT-registered person;**
**b) The seller issues a VAT invoice or official receipt, which separately indicates the VAT component;**
**c) The goods or service is subject to or exempt from VAT, but the sale is covered by a VAT invoice or receipt issued by VAT-registered person;**
**d) The name and TIN of the buyer is not stated or shown in the VAT invoice or receipt Which statement shown above is NOT correct?**

**SUGGESTED ANSWER:**

b) The seller issues a VAT invoice or official receipt, which separately indicates the VAT component
Section 113(B), NIRC.

**For 2012, input tax is not available as a credit against the output tax of the buyer of taxable goods or services during the quarter, if:**

**a) The VAT invoice or receipt of the seller is registered with the BIR;**
**b) The VAT invoice or receipt of the seller does not separately indicate the gross selling price or gross receipts and the VAT component therein;**
**c) The VAT invoice or receipt is issued in the name of the VAT-registered buyer**

**and his TIN is shown in said invoice or receipt;**

**d) The VAT invoice or receipt issued by the seller shows the Taxpayer Identification Number plus the word "VAT" or "VAT registered person".**

**SUGGESTED ANSWER:**

b) The VAT invoice or receipt of the seller does not separately indicate the gross selling price or gross receipts and the VAT component therein
Section 113, NIRC.

21. Refund or tax credit of excess input tax

a. Who may claim for refund/apply for issuance of tax credit certificate

**Wreck Corporation is a domestic corporation engaged in the business of importing, refining and selling petroleum products. During the period from September 1, 2014 to December 31, 2014, Wreck Corporation imported 225 million liters of Jet A-1 aviation fuel and paid the excise taxes thereon. Seventy-five percent (75%) of the total volume of aviation fuel imported were actually sold to international carriers of Philippine and foreign registries for their use or consumption outside of the Philippines in the period from November 1, 2014, to December 31, 2014. Wreck Corporation did not pass on to the international carriers the excise taxes it paid on the importation of petroleum products.**

**On June 25, 2015, Wreck Corporation filed an administrative claim for refund or issuance of tax credit certificate amounting to the excise taxes it had paid on the importation of 225 million liters of Jet A-1 aviation fuel.**

**If you were the Commissioner of Internal Revenue, will you grant Wreck Corporation's administrative claim for refund or issuance of tax credit certificate? Explain your answer. (6%) (2017 BAR)**

**SUGGESTED ANSWER:**

Yes, but only the excise tax which corresponds to the 75% of the total volume of aviation fuel imported that were actually sold to the international carriers. Wreck Corporation, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC. *(CIR v. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, February 19, 2014)*

**Soaring Eagle paid its excise tax liabilities with Tax Credit Certificates (TCCs) which it purchased through the One Stop Shop Inter-Agency Tax Credit Center (Center) of the Department of Finance. The Center is a composite body of the**

**DOF, BIR, BOC and the BOI. The TCCs were accepted by the BIR as payments. A year after, the BIR demanded the payment of alleged deficiency excise taxes on the ground that Soaring Eagle is not a qualified transferee of the TCCs it purchased from other BOI-registered companies. The BIR argued that the TCCs are subject to post-audit as a suspensive condition. On the other hand, Soaring Eagle countered that it is a buyer in good faith and for value who merely relied on the Center's representation of the genuineness and validity of the TCCs. If it is ordered to pay the deficiency, Soaring Eagle claims the same is confiscatory and a violation of due process. Is the assessment against Soaring Eagle valid? Explain. (5%) (2016 BAR)**

**SUGGESTED ANSWER:**

No. The assessment is invalid because the TCCs used by Soaring Eagle are valid and effective. A TCC is an undertaking by the government through the BIR or DOF, acknowledging that a taxpayer is entitled to a certain amount of tax credit from either an overpayment of income taxes, a direct benefit granted by law or other sources and instances granted by law such as on specific unused input taxes and excise taxes on certain goods. As such, tax credit is transferable in accordance with pertinent laws, rules, and regulations. *(Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue, G.R. No.172598, December 21, 2007, 541 SCRA 316).*

b. Period to file claim/apply for issuance of tax credit certificate

**On March 30, 2016, XL Co. filed an administrative claim for refund of unutilized input VAT for taxable year 2014, together with supporting documents. XL Co. claimed that its sale of generated power and delivery of electric capacity was VAT zero-rated. Due to the inaction of the Commissioner of Internal Revenue (CIR), XL Co. filed with the Court of Tax Appeals (CTA) the following judicial claims for refund.**

| **Period Covered** | **Date Filed** |
|---|---|
| **1st Quarter of 2014** | **March 31, 2016** |
| **2nd Quarter of 2014** | **June 30, 2016** |
| **3rd and 4th quarter of 2014** | **August 12, 2016** |

**Is XL Co.'s claim for VAT refund timely filed? Explain your answer. (5%) (2017 BAR)**

**SUGGESTED ANSWER:**

As regards the claims for VAT refund which are administrative in nature, all have been timely filed. The law requires that the administrative claim should be filed within two years from the end of the quarter when the sale was made (Sec. 112(A), NIRC). Hence, the filing of the administrative claim for refund on March 30, 2016 covering the four quarters of 2014, complies with the period prescribed by law.

However, the same is not true as to the judicial claims. Only the judicial claim filed on August 12, 2016 is timely filed. As provided by Section 112(C), 1997 NIRC, as amended, one of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper. *(CIR v. San Roque Power Corporation, G.R. No. 187485, 196113 and 197156, February 12, 2013)*

The Commissioner has been granted by law 120 days within which to decide the taxpayer's claim. Then, if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period. Applying this to the present case, the 120th day from the filing of the administrative claim fell on July 28, 2016. XL Co. may file the judicial claim from July 29, 2016 to August 27, 2016; thus, only the judicial claim filed on August 12, 2016 has been timely filed.

**Gangwam Corporation (GC) filed its quarterly tax returns for the calendar year 2012 as follows:**

**First quarter - April 25, 2012**
**Second quarter - July 23, 2012**
**Third quarter - October 25, 2012**
**Fourth quarter - January 27, 2013**

**On December 22, 2013, GC filed with the Bureau of Internal Revenue (BIR) an administrative claim for refund of its unutilized input Value-Added Tax (VAT) for the calendar year 2012. After several months of inaction by the BIR on its claim for refund, GC decided to elevate its claim directly to the Court of Tax Appeals (CTA) on April 22, 2014.**

**In due time, the CTA denied the tax refund relative to the input VAT of GC for the first quarter of 2012, reasoning that the claim was filed beyond the two-year period prescribed under Section 112(A) of the National Internal Revenue Code (NIRC).**

**(A) Is the CTA correct? (3%)**
**(B) Assuming that GC filed its claim before the CTA on February 22, 2014, would your answer be the same?** (2014 Bar Question)

**SUGGESTED ANSWER :**

(A) No. The CTA is not correct. The two-year period to file a claim for refund refers to the administrative claim and does not refer to the period within which to elevate the claim to the CTA. The filing of the administrative claim for refund was timely done because it is made within two years from the end of the quarter when the zero-rated

transaction took place (*Section112 (A), NIRC).* When GC decided to elevate its claim to the CTA on April 22, 2014, it was after the lapse of 120 days from the filing of the claim for refund with the BIR, hence, the appeal is seasonably filed. The rule on VAT refunds is two years to file the claim with the BIR, plus 120 for the Commissioner to act and inaction after 120 days is a deemed adverse decision on the claim, appealable to the CTA within thirty (30) days from the lapse of the 120-day period. (*CIR v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010).*

(B) Yes. The two-year prescriptive period to file a claim for refund refers to the administrative claim with the BIR and not the period to elevate the claim to the CTA. Hence, the CTA cannot deny the refund for reasons that the first quarter claim was filed beyond the two-year period prescribed by law. However, when the claim is made before the CTA on February 24, there is definitely no appealable decision as yet because the 120-day period for the Commissioner to act on the claim for refund has not yet lapsed. Hence, the act of the taxpayer in elevation the claim to the CTA is premature and the CTA has no jurisdiction to rile thereon. (*CIR v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010).*

**For calendar year 2011, FFF, Inc., a VAT-registered corporation, reported unutilized excess input VAT in the amount of Pl ,000,000.00 attributable to its zero-rated sales. Hoping to impress his boss, Mr. G, the accountant of FFF, Inc., filed with the Bureau of Internal Revenue (BIR) on January 31, 2013 a claim for tax refund/credit of the Pl,000,000.00 unutilized excess input VAT of FFF, Inc. for 2011. Not having received any communication from the BIR, Mr. G filed a Petition for Review with the CTA on March 15, 2013, praying for the tax refund/credit of the Pl,000,000.00 unutilized excess input VAT of FFF, Inc. for 2011.**

**a) Did the CTA acquire jurisdiction over the Petition of FFF, Inc.?**
**b) Discuss the proper procedure and applicable time periods for administrative and judicial claims for refund/credit of unutilized excess input VAT.** (2015 Bar Question)

**SUGGESTED ANSWER:**
a. The CTA has not acquired jurisdiction over the Petition of FFF, Inc. because the juridical claim has been prematurely filed on March 15, 2013. The Supreme Court ruled that the 30-day period after the expiration of the 120-day period fixed by law for the Commissioner of Internal Revenue to act on the claim for refund is jurisdictional and failure to comply would bar the appeal and deprive the CTA of its jurisdiction to entertain the appeal.

In this case, Mr. G filed the administrative claim on January 31, 2013. The petition for review should have been should have been filed on June 30, 2013. Filing the judicial claim on March 15, 2013 is premature, thus the CTA did not acquire jurisdiction.

b. The administrative claim must be filed with the Commissioner of Internal Revenue (CIR) within the two-year prescriptive period. The proper reckoning period date for the

two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. However, as an exception, are claims applied only from June 8, 2007 to September 12, 2008, wherein the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax.

The taxpayer can file a judicial claim in one of two ways: (1) file the judicial claim within thirty days after the Commissioner of Internal Revenue denies the claim within the 120-day period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. As an exception, premature filing is allowed only if filed between December 10, 2003 and October 5, 2010, when the BIR Ruling No. DA-489-03 was still in force.

**Amor Powers, Inc. (API) is a domestic corporation registered with the BIR as a value-added taxpayer. API incurred excess input VAT in the amount of P500,000,000.00 on August 3, 2008. Hence, it filed with the BIR an administrative claim for the refund or credit of these input taxes on August 15, 2010. Without waiting for the CIR to act on its claim, API filed a Petition for Review with the CT A on September 15, 2010 before the lapse of two years after the close of the taxable quarter concerned.**

**In its Comment on the Petition, the CIR argues that API's Petition should be dismissed as it was filed before the lapse of the 120-day period given to the CIR by Sec. 112(D) of the NIRC, which became effective on January 1, 1998. For the CIR, the 120- day period is mandatory and jurisdictional so that any suit filed before its expiration is premature and, therefore, dismissible.**

**API, on the other hand, invokes BIR Ruling No. DA-489-03 issued by the CIR on December 10, 2003 in answer to a query posed by the Department of Finance regarding the propriety of the actions taken by Lazi Bay Resources Development, Inc., which filed an administrative claim for refund with the CIR and, before the lapse of the 120-day period from its filing, filed a judicial claim with the CTA. BIR Ruling No. DA-489-03 stated that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA.**

**Will API's Petition for Review prosper? Decide with reasons. (5%) (2016 BAR)**

***<u>SUGGESTED ANSWER</u>***

Yes. The petition for review filed by API falls within the exemption from the mandatory 120 + 30-day requirement in pursuing a judicial remedy for a claim of refund of input taxes attributable to zero-rated sales. All claims for refund filed between October 6, 2003 when BIR Ruling No. DA-489-03 was issued until the promulgation of

the decision by the Supreme Court ruling on the period by which a taxpayer may pursue a judicial remedy for a claim for refund, must follow the period prescribed in the BIR Ruling.

c. Manner of giving refund

**[a] Explain the procedure for claiming refunds or tax credits of input Value Added Tax (VAT) for zero-rated or effectively zero-rated sales under Sec. 112 of the National Internal Revenue Code (NIRC) from the filing of an application with the CIR up to the CTA. (2.5%) (2016 BAR)**

**[b] Explain the procedure for claiming refunds of tax erroneously or illegally collected under Sec. 229 of the NIRC from the filing of the claim for refunds with the CIR up to the CTA. (2.5%) (2016 BAR)**

**SUGGESTED ANSWER:**

(A) In order to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. The claim for refund must be filed with the Commissioner within 2 years counted from the last day of the quarter when the zero - rated sale was made (Sec.112, NIRC);

2. The claim for refund must be accompanied by a statement under oath that all documents to support the claim has been submitted at the time of filing of the claim for refund (RMC 54-14);

3. The Commissioner must decide on the claim within 120 days from date of filing and the adverse decision is appealable to the CTA within 30 days from receipt *(Sec.112, NIRC; CIR v. Aichi Forging of Asia, Inc:, G.R. No.184823, October 6, 2010, 632 SCRA 422)*

4. If no decision is made within the120-day period, there is a deemed denial or adverse decision which is appealable to the CTA within 30 days from the lapse of the 120-day period (Sec. 112, NIRC 7(a)(1) of RA1125, as amended by RA 9282).

(B) The procedure for claiming refunds of tax erroneously or illegally collected are the following:

1. A written claim for refund must be filed with the Commissioner within two years from date of payment of the tax (Sec. 204, NIRC);

2. A decision of the Commissioner denying the claim, is appealable to the CTA within 30 days from receipt thereof or within two years from date of payment; whichever comes first (Sec. 229, NIRC; Sec. 7(a)(1) of RA1125, as amended by RA 9282);

3. If no decision is made by the Commissioner, the aggrieved taxpayer must consider the inaction as a denial and appeal to the CTA must be filed before the lapse of two years counted from date of payment (Sec. 229, NIRC).

d. Destination principle or cross-border doctrine

22. Invoicing requirements
a. Invoicing requirements in general
b. Invoicing and recording deemed sale transactions
c. Consequences of issuing erroneous VAT invoice or VAT official receipt

**Which statement is FALSE under the VAT law? (2012 BAR)**
**a) A VAT-registered person will be subject to VAT for his taxable transactions, regardless of his gross sales or receipts;**
**b) A person engaged in trade or business selling taxable goods or services must register as a VAT person, when his gross sales or receipts for the year 2011 exceed P1.5 Million;**
**c) A person who issued a VAT-registered invoice or receipt for a VAT-exempt transaction is liable to the 12% VAT as a penalty for the wrong issuance thereof;**
**d) Once a doctor of medicine exercises his profession during the year, he needs to register as a VAT person and to issue VAT receipts for professional fees received.**

**SUGGESTED ANSWER:**
d) Once a doctor of medicine exercises his profession during the year, he needs to register as a VAT person and to issue VAT receipts for professional fees received
Section 236(G)(1)(b), NIRC.

23. Filing of return and payment

**KaPedringMatibag, a sole proprietor, buys and sells "kumot at kulambo" both of which are subject to value-added tax. Since he is using the calendar year as his taxable year, his taxable quarters end on the last day of March, June, September, and December. When should KaPedring file the VAT quarterly return for his gross sales or receipts for the period of June 1 to September 30?** (2011 Bar Question)

**(A) Within 25 days from September 30**
**(B) Within 45 days from September 30**
**(C) Within 15 days from September 30**
**(D) Within 30 days from September 30**

**SUGGESTED ANSWER:**

(A) Within 25 days from September 30

24. Withholding of final VAT on sales to government E. Tax remedies under the NIRC

VI. Tax Remedies under the NIRC
1. Taxpayer's remedies

**The Commissioner of Internal Revenue issued a BIR ruling to the effect that the transaction is liable to income tax and value added tax. Upon receipt of the ruling, a taxpayer does not agree thereto. What is his proper remedy?** (2012 BAR)

**a) File a petition for review with the Court of Tax Appeals within thirty (30) days from receipt thereof;**
**b) File a motion for reconsideration with the Commissioner of Internal Revenue;**
**c) File an appeal to the Secretary of Finance within thirty (30) days from receipt thereof;**
**d) File an appeal to the Secretary of Justice within thirty (30) days from receipt thereof.**

**SUGGESTED ANSWER:**

c) File an appeal to the Secretary of Finance within thirty (30) days from receipt thereof Section 4, NIRC.

a. Assessment
i. Concept of assessment

**Mr. Alvarez is in the retail business. He received a deficiency tax assessment from the BIR containing only the computation of the deficiency tax and the penalties, without any explanation of the factual and legal bases for the assessment.**

**Is the assessment valid? (1%)** (2013 Bar Question)

**(A) The assessment is valid; all that Mr. Alvarez has to know is the amount of the tax.**
**(B) The assessment is invalid; the law requires a statement of the facts and the law upon which the assessment is based.**
**(C) The assessment is valid but Mr. Alvarez can still contest it.**
**(D) The assessment is invalid because Mr. Alvarez has no way to determine if the computation is erroneous.**

**SUGGESTED ANSWER:**

(B) The assessment is invalid; the law requires a statement of the facts and the law upon which the assessment is based.

Section 228 of the NIRC provides that a preliminart assessment notice shall inform the taxpayer in writing of the law and the facts on which the assessment is based as part of due process; otherwise, the assessment shall be void. In relation to this provision, Section 3 of RR No. 12-99 states that the preliminary assessment notice shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the assessment is based. (See also: *Commissioner of Internal Revenue v. Reyes,* G.R. No. 159694, January 27, 2006)

a. Requisites for valid assessment

b. Constructive methods of income determination
c. Inventory method for income determination
d. Jeopardy assessment

**Jeopardy assessment is a valid ground to compromise a tax liability** (2011 Bar Question)
**(A) involving deficiency income taxes only, but not for other taxes.**
**(B) because of doubt as to the validity of the assessment.**
**(C) if the compromise amount does not exceed 10% of the basic tax.**
**(D) only when there is an approval of the National Evaluation Board.**

**SUGGESTED ANSWER:**

(B) because of doubt as to the validity of the assessment.

**What should the BIR do when the prescriptive period for the assessment of a tax deficiency is about to prescribe but the taxpayer has not yet complied with the BIR requirements for the production of books of accounts and other records to substantiate the claimed deductions, exemptions or credits? (2011 Bar Question)**
**(A) Call the taxpayer to a conference to explain the delay.**
**(B) Immediately conduct an investigation of the taxpayer's activities.**
**(C) Issue a jeopardy assessment coupled with a letter of demand.**
**(D) Issue a notice of constructive distraint to protect government interest.**

**SUGGESTED ANSWER:**

C) Issue a jeopardy assessment coupled with a letter of demand.

e. Tax delinquency and tax deficiency

**In January 2011, the BIR issued a ruling that Clemen's vodka imports were not subject to increased excise tax based on his claim that his net retail price was only P200 per 750 milliliter bottle. This ruling was applied to his imports for May, June, and July 2011. In September 2011, the BIR revoked its ruling and assessed him for deficiency taxes respecting his May, June and July 2011 vodka imports because it discovered that his net retail price for the vodka was P250 per bottle from January to September 2011. Does the retroactive application of the revocation violate Clemen's right to due process as a taxpayer?** (2011 Bar Question)

**(A) Yes, since the presumption is that the BIR ascertained the facts before it made its ruling.**
**(B) No, because he acted in bad faith when he claimed a lower net retail price than what he actually used.**
**(C) No, since he could avail of remedies available for disputing the assessment.**
**(D) Yes, since he had already acquired a vested right in the favorable BIR ruling.**

**SUGGESTED ANSWER:**

(B) No, because he acted in bad faith when he claimed a lower net retail price than what he actually used.

**Which among the following circumstances negates the prima facie presumption of correctness of a BIR assessment? (2011 Bar Question)**

**(A) The BIR assessment was seasonably protested within 30 days from receipt.**
**(B) No preliminary assessment notice was issued prior to the assessment notice.**
**(C) Proof that the assessment is utterly without foundation, arbitrary, and capricious.**
**(D) The BIR did not include a formal letter of demand to pay the alleged deficiency.**

**SUGGESTED ANSWER:**

(C) Proof that the assessment is utterly without foundation, arbitrary, and capricious.

**KaTato owns a parcel of land in San Jose, Batangas declared for real property taxation, as agricultural. In 1990, he used the land for a poultry feed processing plant but continued to declare the property as agricultural. In March 2011, the local tax assessor discovered KaTato's change of use of his land and informed the local treasurer who demanded payment of deficiency real property taxes from 1990 to 2011. Has the action prescribed?** (2011 Bar Question)

**(A) No, the deficiency taxes may be collected within five years from when they fell due.**
**(B) No. The deficiency taxes for the period 1990 up to 2011 may still be collected**

**within 10 years from March 2011.**

**(C) Yes. More than 10 years had lapsed for the period 1990 up to 2000, hence the right to collect the deficiency taxes has prescribed.**

**(D) Yes. More than 5 years had lapsed for the collection of the deficiency taxes for the period 1990 up to 2005.**

**SUGGESTED ANSWER:**

B) No. The deficiency taxes for the period 1990 up to 2011 may still be collected within 10 years from March 2011.

ii. Power of the Commissioner to make assessments and prescribe additional requirements for tax administration and enforcement

**On October 15, 2005, ABC Corp. imported 1,000 kilos of steel ingots and paid customs duties and VAT to the Bureau of Customs on the importation. On February 17, 2009, the Bureau of Customs, citing provisions of the Tariff and Customs Code on post-audit, investigated and assessed ABC Corp. for deficiency customs duties and VAT.**

**Is the Bureau of Customs correct?** (2013 Bar Question)

**SUGGESTED ANSWER:**

The Bureau of Customs was not correct.

As to the VAT: The Bureau of Customs has no authority to assess ABC Corp. as this falls under the jurisdiction of the Bureau of Internal Revenue (BIR). Under Sec. 2 of the NIRC, the BIR's powers and duties include, among others, the assessment and collection of all national internal revenue taxes, fees and charges. VAT is a national internal revenue tax under Title IV of the NIRC.

Under Sec. 12 of the NIRC, the Commissioner of Customs and his subordinates are merely agents and deputies for collection, not assessment of national internal revenue taxes.

As to the deficiency customs duties found on post-audit: The Bureau of Customs was not correct in assessing deficiency customs duties. The facts show that the investigation and assessment on post-audit were made on February 17, 2009, which is more than three (3) years from October 15, 2005 which is the date of payment by ABC Corp.
Sec. 4 of Republic Act 9135 amended Section 1603 of the Tariff and Customs Code of the Philippines. The provision states that when articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of three (3) years from the date of the final payment of duties, in the absence of fraud or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon

all parties, unless the liquidation of the import entry was merely tentative. Customs

Administrative Order No. 5-2001 which implements RA 9135, confirms the above conclusion.

a. Power of the Commissioner to obtain information, and to summon/examine, and take testimony of persons

**In 2010, pursuant to a Letter of Authority (LA) issued by the Regional Director, Mr. Abcede was assessed deficiency income taxes by the BIR for the year 2009. He paid the deficiency. In 2011, Mr. Abcede received another LA for the same year 2009, this time from the National Investigation Division, on the ground that Mr. Abcede's 2009 return was fraudulent.**

**Mr. Abcede contested the LA on the ground that he can only be investigated once in a taxable year. Decide.** (2013 Bar Question)

**SUGGESTED ANSWER:**

Mr. Abcede's contention is not correct; he may be re-investigated because he filed a fraudulent tax return for 2009. Section 235 of the NIRC provides that the books and records of taxpayers may be examined and inspected only once in a taxable year, except in cases of fraud, irregularity or mistakes, as determined by the Commissioner.

iii. When assessment is made
a. Prescriptive period for assessment

1. False, fraudulent, and non-filing of returns

b. Suspension of running of statute of limitations

**What is the effect of the execution by a taxpayer of a "waiver of the statute of limitations" on his defense of prescription? (2%)**

**SUGGESTED ANSWER:**

The waiver of the statute of limitation executed by a taxpayer is not a waiver of the right to invoke the defense of prescription. The waiver of the statute of limitation is merely an agreement in writing between the taxpayer and the BIR that the period to assess and collect taxes due is extended to a date certain. If prescription has already set in at the time of the execution of the waiver is invalid, the taxpayer can still raise prescription as a defense (Phil. Journalists Inc., v. CIR, GR No. 162852, Dec. 16, 2004)

**Mia, a compensation income earner, filed her income tax return for the taxable year 2007 on March 30, 2008. On May 20, 2011, Mia received an assessment notice and letter of demand covering the taxable year 2007 but the postmark on**

**the envelope shows April 10, 2011. Her return is not a false and fraudulent return. Can Mia raise the defense of prescription?** (2011 Bar Question)

**(A) No. The 3 year prescriptive period started to run on April 15, 2008, hence, it has not yet expired on April 10, 2011.**
**(B) Yes. The 3 year prescriptive period started to run on April 15, 2008, hence, it had already expired by May 20, 2011.**
**(C) No. The prescriptive period started to run on March 30, 2008, hence, the 3 year period expired on April 10, 2011.**
**(D) Yes. Since the 3-year prescriptive period started to run on March 30, 2008, it already expired by May 20, 2011.**

**SUGGESTED ANSWER:**

A) No. The 3 year prescriptive period started to run on April 15, 2008, hence, it has not yet expired on April 10, 2011.

**There is prima facie evidence of a false or fraudulent return where the: (2011 Bar Question)**
**(A) tax return was amended after a notice of assessment was issued.**
**(B) tax return was filed beyond the reglementary period.**
**(C) taxpayer changed his address without notifying the BIR.**
**(D) deductions claimed exceed by 30% the actual deductions.**

**SUGGESTED ANSWER:**

(D) deductions claimed exceed by 30% the actual deductions.

**The prescriptive period for the collection of the deficiency tax assessment will be tolled: (2012 BAR)**

**a) If the taxpayer files a request for reconsideration with the Asst. Commissioner;**
**b) If the taxpayer files a request for reinvestigation that is approved by the Commissioner of Internal Revenue;**
**c) If the taxpayer changes his address in the Philippines that is communicated to the BIR official;**
**d) If a warrant of levy is served upon the taxpayer's real property in Manila.**

**SUGGESTED ANSWER:**

b) If the taxpayer files a request for reinvestigation that is approved by the Commissioner of Internal Revenue
Section 223, NIRC; BPI v. Commissioner, G.R. No. 139736, October 17, 2005.

**Taxpayer A was required by the BIR to sign and submit a waiver of the statute of**

**limitations on the assessment period, to give the BIR more time to complete its investigation. The BIR accepted the waiver but failed to indicate the date of its acceptance.**
**What is the legal status of the waiver? (1%)**(2013 Bar Question)

**(A) The waiver is valid because the date of acceptance is immaterial and unimportant.**
**(B) The waiver is invalid; the taxpayer cannot be required to waive the statute of limitations.**
**(C) The waiver is invalid; the date of acceptance is crucial in counting the start of the period of suspension of the prescriptive period.**
**(D) The waiver is valid, having been accepted by the BIR.**

**SUGGESTED ANSWER:**

(C) The waiver is invalid; the date of acceptance is crucial in counting the start of the period of suspension of the prescriptive period.

Section 2 of the Revenue Memorandum Order No. 20-90 provides that the date of such acceptance by the BIR should be indicated. Both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

**Globesmart Services, Inc. received a final assessment notice with formal letter of demand from the BIR for deficiency income tax, value-added tax and withholding tax for the taxable year 2016 amounting to P48 million. Globesmart Services, Inc. filed a protest against the assessment, but the Commissioner of Internal Revenue denied the protest. Hence, Globesmart Services, Inc. filed a petition for review in the CTA with an urgent motion to suspend the collection of tax.**

**After hearing, the CTA Division issued a resolution granting the motion to suspend but required Globesmart Services, Inc. to post a surety bond equivalent to the deficiency assessment within 15 days from notice of the resolution. Globesmart Services, Inc. moved for the partial reconsideration of the resolution and for the reduction of the bond to an amount it could obtain. The CTA Division issued another resolution reducing the amount of the surety bond to Jl24 million. The latter amount was still more than the net worth of Globesmart Services, Inc. as reported in its audited financial statements.**

**(a) May the collection of taxes be suspended? Explain your answer. (3%)**

**(b) Is the CTA Division justified in requiring Globesmart Services, Inc. to post a surety bond as a condition for the suspension of the deficiency tax collection? Explain your answer. (3%)**

***SUGGESTED ANSWER:***

a) Yes, the collection of taxes may be suspended. Under Section 11 of RA 1125, as amended, collection of taxes may be suspended when in the opinion of the CTA, it may jeopardize the interest of the Government and/or the taxpayer.

The CTA at any stage of the proceeding may suspend the collection of taxes and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the CTA.

b) No, the CTA Division is not justified in requiring Globesmart to post a surety bond. Jurisprudence provides that the CTA should first conduct a preliminary hearing to determine whether posting of the surety bond is necessary or the amount thereof is justified.

Here, the CTA did not conduct such preliminary hearing, where it could have found that the surety bond required is more than Globesmart's net worth.

iv. General provisions on additions to the tax
a. Civil penalties
b. Interest
c. Compromise penalties

v. Assessment process
a. Tax audit
b. Notice of informal conference
c. Issuance of preliminary assessment notice

**When is a pre-assessment notice required under the following cases? (1%)**
**(A) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return.**
**(B) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent.**
**(C) When the excise tax due on excisable articles has been paid.**
**(D) When an article locally purchased or imported by an exempt person, such as, but not limited to vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.** (2014 Bar Question)

**SUGGESTED ANSWER :**

C. When the excise tax due on excisable articles has been paid.

d. Notice of informal conference
e. Issuance of preliminary assessment notice
f. Exceptions to issuance of preliminary assessment notice

**A preliminary Assessment Notice (PAN) is NOT required to be issued by the BIR before issuing a Final Assessment Notice (FAN) on one of the following cases:** (2012 BAR)

**a) When a taxpayer does not pay the 2010 deficiency income tax liability on or before July 15 of the year;**
**b) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return;**
**c) When a discrepancy has been determined between the value added tax paid and the amount due for the year; d) When the amount of discrepancy shown in the Letter Notice is not paid within thirty (30) days from date of receipt.**

**SUGGESTED ANSWER:**

b) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return
Section 228, NIRC.

**Mr. Tiaga has been a law-abiding citizen diligently paying his income taxes. On May 5, 2014, he was surprised to receive an assessment notice from the Bureau of Internal Revenue (BIR) informing him of a deficiency tax assessment as a result of a mathematical error in the computation of his income tax, as appearing on the face of his income tax return for the year 2011, which he filed on April 15, 2012. Mr. Tiaga believes that there was no such error in the computation of his income tax for the year 2011. Based on the assessment received by Mr. Tiaga, may he already file a protest thereon?** (2014 Bar Question)

**SUGGESTED ANSWER :**

Yes, *Mr. Tiaga* may already file a protest. Rev. Regs. No. 18-2013, implementing Sec. 228 of the Tax Code, states that no PAN is required if the deficiency tax is a result of a mathematical error in the computation of tax as appearing on the face of the tax return. In such case, an FLD/FAN shall be issued outright. Thus, the assessment notice sent by the BIR is deemed an FLD/FAN which may be the subject of a protest.

g. Reply to preliminary assessment notice

**On July 31, 2011, Esperanza received a preliminary assessment notice from the BIR demanding that she pays P180,000.00 deficiency income taxes on her 2009 income. How many days from July 31, 2011 should Esperanza respond to the notice?** (2011 Bar Question)
(A) 180 days. (B) 30 days. (C) 60 days. (D) 15 days.

**SUGGESTED ANSWER:**

(D) 15 days

h. Issuance of formal letter of demand and assessment notice/final assessment notice

**On March 30, 2005 Miguel Foods, Inc. received a notice of assessment and a letter of demand on its April 15, 2002 final adjustment return from the BIR. Miguel Foods then filed a request for reinvestigation together with the requisite supporting documents on April 25, 2005. On June 2, 2005, the BIR issued a final assessment reducing the amount of the tax demanded. Since Miguel Foods was satisfied with the reduction, it did not do anything anymore. On April 15, 2010 the BIR garnished the corporation's bank deposits to answer for the tax liability. Was the BIR action proper?** (2011 Bar Question)

**(A) Yes. The BIR has 5 years from the filing of the protest within which to collect.**
**(B) Yes. The BIR has 5 years from the issuance of the final assessment within which to collect.**
**(C) No. The taxpayer did not apply for a compromise.**
**(D) No. Without the taxpayer's prior authority, the BIR action violated the Bank Deposit Secrecy Law.**

**SUGGESTED ANSWER:**

(B) Yes. The BIR has 5 years from the issuance of the final assessment within which to collect

**On April 15, 2011, the Commissioner of Internal Revenue mailed by registered mail the final assessment notice and the demand letter covering the calendar year 2007 with the QC Post Office. Which statement is correct?** (2012 BAR)

**a) The assessment notice is void because it was mailed beyond the prescriptive period;**
**b) The assessment notice is void because it was not received by the taxpayer within the three-year period from the date of filing of the tax return;**
**c) The assessment notice is void if the taxpayer can show that the same was received only after one (1) month from date of mailing;**
**d) The assessment notice is valid even if the taxpayer received the same after the three-year period from the date of filing of the tax return.**

**SUGGESTED ANSWER:**

d) The assessment notice is valid even if the taxpayer received the same after the three-year period from the date of filing of the tax return.
Section 203, NIRC; BPI v. CIR, G.R. No. 139736, October 17, 2005.

**Taxpayer Andy received on January 3, 2010 a preliminary assessment notice (PAN) from the BIR, stating that he had fifteen (15) days from its receipt to comment or to file a protest. Eight (8) days later (or on January11, 2010), before**

**he could comment or file a protest, Andy received the final assessment notice (FAN).**

**Decide on the validity of the FAN. (1%)**(2013 Bar Question)
**(A) The FAN is invalid; Andy was not given the chance to respond to the PAN, in violation of his due process rights.**
**(B) The FAN is invalid for being premature.**
**(C) The FAN is valid since it was issued before the right to assess prescribed.**
**(D) The FAN is valid. There is no legal requirement that the FAN should await the protest to the PAN because protest to the PAN is not mandatory.**

**SUGGESTED ANSWER:**

(D) The FAN is valid. There is no legal requirement that the FAN should await the protest to the PAN because protest to the PAN is not mandatory.

RR No. 12-99 provides for the due process requirement in the issuance of a deficiency tax assessment pursuant to Section 228 of the NIRC. Under 3.1.1 of RR No. 12-99, if the taxpayer is not amenable to the submitted report of investigation of the revenue officer, the taxpayer shall be informed by the BIR, in writing, of the discrepancy/discrepancies for purposes of the informal conference in order to afford the taxpayer with an opportunity to present his side of the case. His failure to respond within 15 days from the date of the receipt of the notice for the informal conference would result in the issuance of PAN. Therefore, prior to the issuance of the PAN, the taxpayer is already given the opportunity to present his side. Although the same RR provides that the taxpayer is given 15 days to file a protest, his failure to do so or the issuance by the BIR of the FAN before the expiration of the 15-day period, as in the given problem, shall not defeat Andy's right to due process.

Upon issuance of the FAN, Andy may still file an administrative protest within thirty (30) days form the date of receipt thereof. In case of denial of the protest by the Commissioner's authorized representative, Andy may still elevate the adverse decision to the Commissioner within 30 days form its receipt. He may, thereafter, elevate the adverse decision to the CTA and, finally, to the Supreme Court.

Considering, therefore, that Andy could present his side before and after the issuance of the PAN, the reply to the latter is mandatory.

i. Disputed assessment

**No action shall be taken by the BIR on the taxpayer's disputed issues until the taxpayer has paid the deficiency taxes:** (2011 Bar Question)
**(A) when the assessment was issued against a false and fraudulent return.**
**(B) if there was a failure to pay the deficiency tax within 60 days from BIR demand.**
**(C) if the Regional Trial Court issues a writ of preliminary injunction to enjoin the**

**BIR.**
**(D) attributable to the undisputed issues in the assessment notice.**

**SUGGESTED ANSWER:**

(D) attributable to the undisputed issues in the assessment notice.

j. Administrative decision on a disputed assessment

vi. Protesting assessment
a. Protest of assessment by taxpayer
1. Protested assessment

**The BIR issued in 2010 a final assessment notice and demand letter against X Corporation covering deficiency income as for the year 2008 in the amount of P10 Million. X Corporation earlier requested the advice of a lawyer on whether or not it should file a request for reconsideration or a request for reinvestigation. The lawyer said it does not matter whether the protest against the assessment is a request for reconsideration or a request for reinvestigation, because it has same consequences or implications.**

a. **What are the differences between a request for reconsideration and a request for reinvestigation?**
b. **Do you agree with the advice of the lawyer? Explain your answer (2012)**

**Suggested Answer:**

a. Request for Reconsideration – plea for evaluation of assessment **on the basis of existing records without need of presentation of additional evidence**. It does **not suspend the period to collect the deficiency tax**.

   Request for Reinvestigation – plea for re-evaluation **on the basis of newly discovered evidences** which are to be introduced for examination for the first time. It **suspends the prescriptive period to collect**.

b. NO, in view of the aforesaid difference between Request for Reconsideration & Request for Reinvestigation.

**On March 10, 2010, Continental, Inc. received a preliminary assessment notice (PAN) dated March 1, 2010 issued by the Commissioner of Internal Revenue (CIR) for deficiency income tax for its taxable year 2008. It failed to protest the PAN. The CIR thereupon issued a final assessment notice (FAN) with letter of demand on April 30, 2010. The FAN was received by the corporation on May 10, 2010, following which or on May 25, 2010, it filed its protest against it.**

**The CIR denied the protest on the ground that the assessment had already become final and executory, the corporation having failed to protest the PAN. Is**

**the CIR correct?**

**Explain.** (2010 Bar Question)

**SUGGESTED ANSWER:**

The issuance of preliminary assessment notice (PAN) does not give rise to the right of the taxpayer to protest. What can be protested by a taxpayer is the final assessment notice (FAN) or that assessment issued following the PAN. Since the FAN was timely protested, within 30 days from receipt thereof, the assessment did not become final and executory.

2. When to file a protest

**Since the taxpayer has opted to carry-over the PI million overpaid income tax for taxable year 2008, said option is considered irrevocable and no application for cash refund shall be allowed for it (Sec. 76, NIRC; CIR v. Bank of Philippine Island, G.R. No. 178490, July 7, 2009).**

**On March 10, 2010, Continental, Inc. received a preliminary assessment notice (PAN) dated March 1, 2010 issued by the Commissioner of Internal Revenue (CIR) for deficiency income tax for its taxable year 2008. It failed to protest the PAN. The CIR thereupon issued a final assessment notice (FAN) with letter of demand on April 30, 2010.**

**The FAN was received by the corporation on May 10, 2010, following which or on May 25, 2010, it filed its protest against it.**

**The CIR denied the protest on the ground that the assessment had already become final and executory, the corporation having failed to protest the PAN.**

**Is the CIR correct? Explain. (5%)**

**SUGGESTED ANSWER:**

No. The issuance of preliminary assessment notice (PAN) does not give rise to the right of the taxpayer to protest. What can be protested by a taxpayer is the final assessment notice (FAN) or that assessment issued following the PAN. Since the FAN was timely protested (within 30 days from receipt thereof, the assessment did not become final and executory (Sec. 228, NIRC; RR No. 12-99).

**A final assessment notice was issued by the BIR on June 13, 2000, and received by the taxpayer on June 15, 2000. The taxpayer protested the assessment on July 31, 2000. The protest was initially given due course, but was eventually denied by the Commissioner of Internal Revenue in a decision dated June 15, 2005. The**

**taxpayer then filed a petition for review with the Court of Tax Appeals (CTA), but the CTA dismissed the same.**

**Is the CTA correct in dismissing the petition for review? Explain your answer. (4%)**

**SUGGESTED ANSWER:**

Yes. The protest was filed out of time, hence the CTA does not acquire jurisdiction over the matter (CIR v. Atlas Mining and Development Corp. [2000]). (BAR 2009)

3. Forms of protest
4. Content and validity of protest

**When a protest against the deficiency income tax assessment was denied by the BIR Regional Director of Quezon City, the appeal to the Court of Tax Appeals must be filed by a taxpayer:** (2012 BAR)

**a) If the amount of basic tax assessed is P100,000.00 or more;**
**b) If the amount of basic tax assessed is P300,000.00 or more;**
**c) If the amount of basic tax assessed is P500,000.00 or more;**
**d) If the amount of basic tax assessed is P1 Million or more;**

**SUGGESTED ANSWER:**

All the choices are correct. All decisions on disputed assessments are appealable to the CTA (in Division) irrespective of the amount *(Section 3, RA 9282).*

**The submission of the required documents within sixty (60) days from the filing of the protest is available only where:** (2012 BAR)

**a) The taxpayer previously filed a Motion for Reconsideration with the BIR official;**
**b) The taxpayer previously filed a request for reconsideration with the BIR official;**
**c) The taxpayer previously filed a request for reinvestigation with the BIR official;**
**d) The taxpayer previously filed an extension to file a protest with the BIR official.**

**SUGGESTED ANSWER:**

c) The taxpayer previously filed a request for reinvestigation with the BIR official Section 228, NIRC; RCBC v. CIR.

b. Submission of documents within 60 days from filing of protest
c. Effect of failure to protest

**What is the effect on the tax liability of a taxpayer who does not protest an**

**assessment for deficiency taxes?** (2011 Bar Question)

**(A) The taxpayer may appeal his liability to the CTA since the assessment is a final decision of the Commissioner on the matter.**

**(B) The BIR could already enforce the collection of the taxpayer's liability if it could secure authority from the CTA.**

**(C) The taxpayer's liability becomes fixed and subject to collection as the assessment becomes final and collectible.**

**(D) The taxpayer's liability remains suspended for 180 days from the expiration of the period to protest.**

**SUGGESTED ANSWER:**

C) The taxpayer's liability becomes fixed and subject to collection as the assessment becomes final and collectible.

d. Period provided for the protest to be acted upon

vii. Rendition of decision by Commissioner
a. Denial of protest
1. Commissioner's actions equivalent to denial of protest

a. Filing of criminal action against taxpayer
b. Issuing a warrant of distraint and levy

2. Inaction by Commissioner

viii. Remedies of taxpayer to action by Commissioner
a. In case of denial of protest

**In the examination conducted by the revenue officials against the corporate taxpayer in 2010, the BIR issued a final assessment notice and demand letter which states: "It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree, you may appeal this final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable." The assessment was immediately appealed by the taxpayer to the Court of Tax Appeals, without filing its protest against the assessment and without a denial thereof by the BIR. If you were the judge, would your deny the petition for review filed by the taxpayer and consider the case as prematurely filed? Explain your answer (2012 BAR)**

**Suggested Answer:**
NO, the Petition for Review should not be denied. The case is an exception to the rule on exhaustion of administrative remedies. **The BIR is estopped from claiming that**

**the filing of the Petition for Review is premature because the taxpayer failed to exhaust all administrative remedies. The statement of the BIR in its Final Assessment Notice and Demand Letter led the taxpayer to conclude that only a final judicial ruling in his favor would be accepted by the BIR.** The taxpayer cannot be blamed for not filing a protest against the Formal Letter of Demand with Assessment Notices since the language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter. The CIR should indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. Although there was no direct reference for the taxpayer to bring the matter directly to the CTA, it cannot be denied that the word "appeal" under prevailing tax laws refers to the filing of a Petition for Review with the CTA *(Allied Bank v. CIR, G.R. No. 175097, Feb. 5, 2010).*

**Explain the following statements:**

a. **The acquittal of the taxpayer in a criminal action under the Tax Code does not necessarily result in an exoneration of said taxpayer from his civil liability to pay taxes.**
b. **Should the accused be found guilty beyond reasonable doubt for violation of Sec. 255 of the Tax Code for failure to file tax return or to supply correct information, the imposition of the civil liability by the CTA should be automatic and no assessment notice from the BIR is necessary? (2012)**

**Suggested Answer:**

a. In taxation, the taxpayer becomes criminally liable because of a civil liability. While he may be acquitted on the criminal case, his acquittal could not operate to discharged him from the duty to pay tax, since that duty is imposed by statute prior to and independent of any attempt on the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is a mere civil liability derived from crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist (*Castro v. Collector of Internal Revenue, L-12174, April 26, 1962*).
b. YES. If the failure to file tax return or to supply correct information resulted to unpaid taxes the amount of which is proven during trial, the CTA shall not only impose the criminal penalty but must likewise order the payment of the civil liability *(Sec. 205(b), NIRC).* As a matter of fact, it is well-recognized that in the case of failure to file a return, a proceeding in court for the collection of the tax may be filed without the need of an assessment *(Sec. 222(a), NIRC).*

**A taxpayer received an assessment notice from the BIR on February 3, 2009. The following day, he filed a protest, in the form of a request for reinvestigation, against the assessment and submitted all relevant documents in support of the protest. On September 11, 2009, the taxpayer, apprehensive because he had not yet received notice of a decision by the Commissioner on his protest, sought your advice.**

**What remedy or remedies are available to the taxpayer? Explain. (4%)**

**SUGGESTED ANSWER:**

The remedy of a taxpayer is to avail of either of two options:

a. File a petition for review with the CTA within 30 days after the expiration of the 180-day period from submission of all relevant documents; or
b. Await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision.

These options are mutually exclusive such that resort to one bars the application of the other (RCBC v. OR, 522SCRA 144(2007]). (BAR 2009)

b. In case of inaction by Commissioner within 180 days from submission of documents

**On March 27, 2012, the Bureau of Internal Revenue (BIR) issued a notice of assessment against Blue Water Industries Inc. (BWI), a domestic corporation, informing the latter of its alleged deficiency corporate income tax for the year 2009. On April 20, 2012, BWI filed a letter protest before the BIR contesting said assessment and demanding that the same be cancelled or set aside.**

**However, on May 19, 2013, that is, after more than a year from the filing of the letter protest, the BIR informed BWI that the latter's letter protest was denied on the ground that the assessment had already become final, executory and demandable. The BIR reasoned that its failure to decide the case within 180 days from filing of the letter protest should have prompted BWI to seek recourse before the Court of Tax Appeals (CTA) by filing a petition for review within thirty (30) days after the expiration of the 180-day period as mandated by the provisions of the last paragraph of Section 228 of the National Internal Revenue Code (NIRC). Accordingly, BWI's failure to file a petition for review before the CTA rendered the assessment final, executory and demandable.**

**Is the contention of the BIR correct? Explain.** (2014 Bar Question)

**SUGGESTED ANSWER :**

No. Notwithstanding the lapse of the 180-day period, BWI had the option to await the BIR'S final decision on its protest before filing a Petition for Review with the CTA. Pursuant to the case of Lascona Land Co., Inc. v. Commissioner of Internal Revenue (G.R. No. 171251, March 5, 2012), in case the Commissioner fails to act on a taxpayer's protest within the 180-day period, a taxpayer can either: (*i*) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (*ii*) await the final decision of the Commissioner on the disputed assessments, and thereafter appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision. In the present case, BWI simply availed itself of the second

option.

**A taxpayer received an assessment notice from the BIR on February 3, 2009. The following day, he filed a protest, in the form of a request for reinvestigation, against the assessment and submitted all relevant documents in support of the protest. On September 11, 2009, the taxpayer, apprehensive because he had not yet received notice of a decision by the Commissioner on his protest, sought your advice.**

**What remedy or remedies are available to the taxpayer? Explain. (4%)**

**SUGGESTED ANSWER:**

The remedy of a taxpayer is to avail of either of two options:
1. File a petition for review with the CTA within 30 days after the expiration of the 180-day period from submission of all relevant documents; or
2. Await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision.

These options are mutually exclusive such that resort to one bars the application of the other (RCBC v. OR, 522SCRA 144(2007]). (BAR 2009)

c. Effect of failure to appeal

**Spanflex Int'l Inc. received a notice of assessment from the BIR. It seasonably filed a protest with all the necessary supporting documents but the BIR failed to act on the protest. Thirty days from the lapse of 180 days from the filing of its protest, Spanflex still has not elevated the matter to the CTA. What remedy, if any, can Spanflex take? (2011 Bar Question)**
**(A) It may file a motion to admit appeal if it could prove that its failure to appeal was due to the negligence of counsel.**
**(B) It may no longer appeal since there is no BIR decision from which it could appeal.**
**(C) It may wait for the final decision of the BIR on his protest and appeal it to the CTA within 30 days from receipt of such decision.**
**(D) None. Its right to appeal to the CTA has prescribed.**

**SUGGESTED ANSWER:**

(C) It may wait for the final decision of the BIR on his protest and appeal it to the CTA within 30 days from receipt of such decision.

**The taxpayer seasonably filed his protest together with all the supporting documents. It is already July 31, 2011, or 180 days from submission of the protest but the BIR Commissioner has not yet decided his protest. Desirous of an early resolution of his protested assessment, the taxpayer should file his appeal to the**

**Court of Tax Appeals not later than:** (2011 Bar Question)
**(A) August 31, 2011.**
**(B) August 30, 2011.**
**(C) August 15, 2011.**
**(D) August 1, 2011.**

**SUGGESTED ANSWER:**

b) August 30, 2011;

**The taxpayer received an assessment notice on April 15, 2011 and filed its request for reinvestigation against the assessment on April 30, 2011. Additional documentary evidence in support of its protest was submitted by it on June 30, 2011. If no denial of the protest was received by the taxpayer, when is the last day for the filing of its appeal to the CTA? (2012 BAR)**
**a) November 30, 2011;**
**b) December 30, 2011;**
**c) January 30, 2012;**
**d) February 28, 2012.**

**SUGGESTED ANSWER:**
c) January 30, 2012
Section 228, NIRC.

**Using the same facts in the immediately preceding number, but assuming that the final decision on the disputed assessment was received by the taxpayer on July 30, 2011, when is the last day for filing of the appeal to the CTA?** (2012 BAR)
a) August 30, 2011; b) September 30, 2011; c) December 30, 2011; d) January 30, 2012.

**SUGGESTED ANSWER:**

a) August 30, 2011;
Section 228, NIRC (nearest answer but not correct answer)

*[Note: The period to appeal is within 30 days from receipt of the final decision by the Commissioner. The decision was received on July 30, 2011 so the last day to perfect an appeal with the CTA is August 29, 2011. It is thus clear that the question did not provide for the CORRECT answer. Hence, it should be treated as a bonus question.]*

**On May 15, 2013, CCC, Inc. received the Final Decision on Disputed Assessment issued by the Commissioner of Internal Revenue (CIR) dismissing the protest of CCC, Inc. and affirming the assessment against said corporation. On June 10, 2013, CCC, Inc. filed a Petition for Review with the Court of Tax Appeals (CTA) in division. On July 31, 2015, CCC, Inc. received a copy of the Decision dated July 22, 2015 of the CT A division dismissing its Petition. CCC, Inc. immediately filed a**

**Petition for Review with the CT A *en banc* on August 6, 2015. Is the immediate appeal by CCC, Inc. to the CTA *en banc* of the adverse Decision of the CTA division the proper remedy?** (2015 Bar Question)

**SUGGESTED ANSWER:**

No, CCC, Inc. should first file a motion for reconsideration with the CTA Division. Petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division.

b. Collection
i. Requisites
ii. Prescriptive periods

**On January 27, 2017, Ramon, the comptroller of Vantage Point, Inc., executed a document entitled *Waiver of the Statute of Limitations* in connection with the BIR's investigation of the tax liabilities of the company for the year 2012. However, the Board of Directors of Vantage Point, Inc. did not adopt a board resolution authorizing Ramon to execute the waiver.**

**On October 14, 2017, Vantage Point, Inc. received a preliminary assessment notice from the BIR indicating its deficiency withholding taxes for the year 2012. Vantage Point, Inc. filed its protest. On October 30, 2017, the BIR issued a formal letter of demand and final assessment notice. Vantage Point, Inc. again filed a protest. The Commissioner of Internal Revenue denied the protests and directed the collection of the assessed deficiency taxes.**

**Accordingly, Vantage Point, Inc. filed a petition for review in the CTA to seek the cancellation and withdrawal of the assessment on the ground of prescription.**

- **(a) What constitutes a valid waiver of the statute of limitations for the assessment and collection of taxes? Explain your answer. (3%)**
- **(b) Has the right of the Government to assess and collect deficiency taxes from Vantage Point, Inc. for the year 2012 prescribed? Explain your answer. (3%)**

***SUGGESTED ANSWER:***

a) A valid waiver of the statute of limitations is one that is executed by the taxpayer and accepted by the BIR prior to the expiration of the original period for assessment. Moreover, in case of a corporation, it should be executed by a person duly authorized by the board or by its responsible officer.

b) Yes, the right of the government to assess and collect deficiency taxes from Vantage Point, Inc. for the year 2012 has prescribed. The government can assess and collect deficiency taxes only within three years from the time it is due, unless there is a valid waiver executed before expiration of the original three-year period.

Here, the three-year period has expired and there was no valid waiver since Ramon executed the waiver after the original three-year period has prescribed. Hence, the government cannot anymore collect deficiency taxes in 2012 from Vantage Point, Inc.

**The requisites for a valid waiver of the three-year (3-year) prescriptive period for the BIR to assess taxes due in the taxable year are prescribed by Revenue Memorandum Order (RMO) No. 20-90:**

**1. The waiver must be in the proper form prescribed by RMO 20-90.**

**2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.**

**3. The waiver should be duly notarized.**

**4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.**

**5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.**

**6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.**

**After being assessed by the BIR with alleged deficiency income taxes, VVV Corporation (VVV) through Enrique, its President, executed a waiver of the prescriptive period. The waiver was signed by Revenue District Officer (RDO) Alfredo. However, the waiver did not state the date of execution by the taxpayer and date of acceptance by the BIR. Enrique was also not furnished a copy of the waiver by the BIR.**

**VVV claims that the waiver is void due to non-compliance with RMO 20-90. Hence, the period for assessment had already prescribed. Moreover, since the assessment involves P2 million, the waiver should have been signed by the CIR and instead of a mere RDO. On the other hand, the BIR contends that the requirements ofRMO No. 20-90 are merely directory; that the execution of the waiver by VVV was a renunciation of its right to invoke prescription and that the government cannot be estopped by the mistakes committed by its revenue officers. Is VVV liable? Explain. (5%) (2016 BAR)**

***SUGGESTED ANSWER***

No. The waiver was executed after VVV Corporation (VVV) was assessed for deficiency income taxes obviously to justify the assessment made after prescription had set in. This is the reason why WWV is invoking prescription due to the alleged invalidity of the waiver for failure to comply with the requisites set forth under RMO 20-90. A waiver executed beyond the prescriptive period is ineffective (CIR v. The Stanley Works Sales (Phils), Inc., G.R. No. 187589, December 3, 2014, 743 SCRA 642).

iii. Distraint of personal property including garnishment

**When a BIR decision affirming an assessment is appealed to the CTA, the BIR's power to garnish the taxpayer's bank deposits:** (2011 Bar Question)
**(A) is suspended to await the finality of such decision.**
**(B) is suspended given that the CTA can reverse BIR decisions when prejudicial to the taxpayer.**
**(C) is not suspended because only final decisions of the BIR are subject to appeal.**
**(D) is not suspended since the continued existence of government depends on tax revenues.**

**SUGGESTED ANSWER:**

(D) is not suspended since the continued existence of government depends on tax revenues.
a. Summary remedy of distraint of personal property
1. Purchase by the government at sale upon distraint
2. Report of sale to the Bureau of Internal Revenue (BIR)

3. Constructive distraint to protect the interest of the government

iv. Summary remedy of levy on real property
a. Advertisement and sale
b. Redemption of property sold
c. Final deed of purchaser

v. Forfeiture to government for want of bidder
a. Remedy of enforcement of forfeitures
    1. Action to contest forfeiture of chattel
b. Resale of real estate taken for taxes
c. When property to be sold or destroyed
d. Disposition of funds recovered in legal proceedings or obtained from forfeiture

vi. Further distraint or levy

**Which court has jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the waiver of the Statute of Limitations was validly effected?** (2012 BAR)
a) City Courts; b) Regional Trial Court; c) Court of Tax Appeals; d) Court of Appeals.

**SUGGESTED ANSWER:**

c) Court of Tax Appeals
Section 7, RA 9282.

**Which statement is correct? The collection of a deficiency tax assessment by distraint and levy:** (2012 BAR)
**a) May be repeated, if necessary, until the full amount due, including all expenses, is collected;**
**b) Must be done successively, first by distraint and then by levy;**
**c) Automatically covers the bank deposits of a delinquent taxpayer;**
**d) May be done only once during the taxable year.**

**SUGGESTED ANSWER:**

a) May be repeated, if necessary, until the full amount due, including all expenses, is collected
Section 217, NIRC.

vii. Tax lien
viii. Compromise
a. Authority of the Commissioner to compromise and abate taxes

**(a) Differentiate *outright smuggling* from *technical smuggling.* (3%)**

**(b) Distinguish *compromise* from *abatement* of taxes. (3%) (2017 BAR)**

***SUGGESTED ANSWER:***

a) Outright smuggling refers to importation of goods and articles of commerce without the required importation documents, or are disposed of in the local market without having been cleared by the Bureau of Customs or other authorized government agencies, to evade the payment of taxes, duties, and other charges.

   Technical smuggling, by contrast, refers to importation of goods and articles through fraudulent, falsified or erroneous declarations to substantially reduce or avoid payment of correct taxes, duties, and other charges.

b) Compromise is the remedy that may be resorted to when there is (i) a reasonable doubt as to the validity of the claim against the taxpayer exists; or (ii) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

   Abatement, by contrast, is the remedy that may resorted to when (i) the tax or any portion thereof appears to be unjustly or excessively assessed; or (ii) The administration and collection costs involved do not justify the collection of the amount due.

   All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud. (Section 204 of the NIRC).

**Does the Court of Appeals have the power to review compromise agreements forged by the Commissioner of Internal Revenue and a taxpayer? Explain.** (2010 Bar Question)

**SUGGESTED ANSWER:**

No, for either of two reasons:

(a) in instances in which the CIR is vested with authority to compromise, such authority should be exercised in accordance with the CIR discretion and courts have no power, as a general rule, to compel him to exercise such discretion one way or another.

(b) If the CIR abuses his discretion by not following the parameters set by law, the CTA, not the CA, may correct such abuse if the matter is appealed to it. In case of arbitrary or capricious exercise by the CIR of the power to compromise, the compromise can be attacked and reversed through judicial process. It must be noted however, that a compromise is considered as other matters arising under the NIRC which vests the CTA with jurisdiction and since the decision of the CTA is appealable to the Supreme Court, the Court of Appeals is devoid of any power to review a compromise settlement forged by the CIR.

**When the financial position of the taxpayer demonstrates a clear inability to pay the tax, the Commissioner of Internal Revenue may validly compromise the tax liability.**

**SUGGESTED ANSWER:**

True. Financial incapacity is a ground allowed by law in order that the Commissioner of Internal Revenue may compromise a tax liability (Section 204, NIRC), (BAR 2009)

ix. Criminal and civil actions

**Mr. Chan, a manufacturer of garments, was investigated for failure to file tax returns and to pay taxes for the taxable year 1997. Despite the subpoena duces tecum issued to him, he refused to present and submit his books of accounts and allied records. Investigators, therefore, raided his factory and seized several bundles of manufactured garments, supplies and unpaid imported textile materials. After his apprehension and based on the testimony of a former employee, deficiency income and business taxes were assessed against Mr. Chan on April 15, 2000. It was then that he paid the taxes. Criminal action was nonetheless instituted against him in the Regional Trial Court for violation of the Tax Code. Mr. Chan moved to dismiss the criminal case on the ground that he had already paid the taxes assessed against him. He also demanded the return of the garments and materials seized from his factory. How will you resolve Mr. Chan's motion? (2012 BAR)**

**Suggested Answer:**
The motion to dismiss should be denied. **The satisfaction of the civil liability is not one of the grounds for the extinction of criminal action** (*People v. Ildefonso Tierra, 12 SCRA 666 [1964]*). **Likewise, the payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of the Tax Code** *(Sec. 253[a], NIRC).* However, the garments and materials seized from the factory should be ordered returned because the payment of the tax had released them from any lien that the Government has over them.

**Based on the Affidavit of the Commissioner of Internal Revenue (CIR), an Information for failure to file income tax return under Section 255 of the National Internal Revenue Code (NIRC) was filed by the Department of Justice (DOJ) with the Manila Regional Trial Court (RTC) against XX, a Manila resident.**

**XX moved to quash the Information on the ground that the RTC has no jurisdiction in view of the absence of a formal deficiency tax assessment issued by the CIR.**

**Is a prior assessment necessary before an Information for violation of Section 255 of the NIRC could be filed in court? Explain.** (2010 Bar Question)

**SUGGESTED ANSWER:**

No. In case of failure to file a return, a proceeding in court for the collection of the tax may be filed without an assessment. The tax can be collected by filing a criminal action with the RTC because a criminal action with the RTC is a mode of collecting the tax liability. Besides, the CIR is empowered to prepare a return on the basis of his own knowledge and upon such information and he can obtain from testimony or otherwise, which shall be *prima facie* correct and sufficient for legal purposes. The issuance of a formal deficiency tax assessment, therefore, is not required.

a. Suit to recover tax based on false or fraudulent returns

**True or False.** (2010 Bar Question)

**a. In civil cases involving the collection of internal revenue taxes, prescription is construed strictly against the government and liberally in favor of the taxpayer. (1%)**

**SUGGESTED ANSWER:** True.

**b. In criminal cases involving tax offenses punishable under the National Internal Revenue Code (NIRC), prescription is construed strictly against the government.**

**SUGGESTED ANSWER:** False.

**c. In criminal cases where the Court of Tax Appeals (CTA) has exclusive original jurisdiction, the right to file a separate civil action for the recovery of taxes may be reserved. (1%)**

**SUGGESTED ANSWER:** False.

**d. Proceedings before the CTA in the exercise of its exclusive original jurisdiction are in the nature of trial *de novo*. (1%)**

**SUGGESTED ANSWER:** True.

**e. Judgments, resolutions or orders of the Regional Trial Court in the exercise of its *original* jurisdiction involving criminal offenses arising from violations of the NIRC are appealable to the CTA, which shall hear the cases *en banc*. (1%)**

**SUGGESTED ANSWER:** False.

**The prescriptive period to file a criminal action is:** (2012 BAR)

**a) Ten (10) years from the date of discovery of the commission of fraud or non-filing of tax return;**

**b) Five (5) years from the date of issuance of the final assessment notice;**
**c) Three (3) years from the filing of the annual tax return;**
**d) Five (5) years from the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.**

**SUGGESTED ANSWER:**

d) Five (5) years from the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
Section 281, NIRC.

**The accused's mere reliance on the representations made by his accountant, with deliberate refusal or avoidance to verify the contents of his tax return and to inquire on its authenticity constitutes:** (2012 BAR)

**a) Simple negligence; b) Gross negligence; c) Willful blindness; d) Excusable negligence.**

**SUGGESTED ANSWER:**
c) Willful blindness; CTA E.B. Criminal Case No. 006; People vsKintanar, G.R. No. 196340.

**The acquittal of the accused in the criminal action for the failure to file income tax return and failure to supply correct information will have the following consequence: (2012 BAR)**
**a) The CTA will automatically exempt the accused from any civil liability;**
**b) The CTA will still hold the taxpayer liable for deficiency income tax liability in all cases, since preponderance of evidence is merely required for tax cases;**
**c) The CTA will impose civil or tax liability only if there was a final assessment notice issued by the BIR against the accused in accordance with the prescribed procedures for issuing assessments, which was presented during the trial;**
**d) The CTA will impose civil or tax liability, provided that a computation of the tax liability is presented during the trial.**

**SUGGESTED ANSWER:**

c) The CTA will impose civil or tax liability only if there was a final assessment notice issued by the BIR against the accused in accordance with the prescribed procedures for issuing assessments, which was presented during the trial
OR
d) The CTA will impose civil or tax liability, provided that a computation of the tax liability is presented during the trial.
Republic v. Patanao, L-22356, July 1, 1967; (Castro v. Collector of Internal Revenue, L-

12174, April 26, 1962).

c. Refund

i. Grounds and requisites for refund

**X Corporation had excess income tax payment for the year 2008, which it chose to carry over in 2009. In filing its 2009 corporate income tax return, it signified its intention (by checking the small box "refund" at the bottom of the return) to get a refund of the overpaid amount in 2008. Can the refund be allowed or not, and if disallowed, does X Corporation lose the claimed amount?** (2012 BAR)

**a) X Corporation may not get the refund because the decision to carry over in 2008 was irrevocable for that year, and it may not change that decision in succeeding years;**
**b) X Corporation may not get the refund in 2009, but the amount being claimed as refund may be utilized in succeeding years until fully exhausted because there is no prescriptive period for carry over of excess income tax payments;**
**c) X Corporation may get the refund, provided that it will no longer carry over such amount or utilize the same against its income tax liability in the future;**
**d) X Corporation may file instead a claim of tax credit, in lieu of refund.**

**SUGGESTED ANSWER:**

b) X Corporation may not get the refund in 2009, but the amount being claimed as refund may be utilized in succeeding years until fully exhausted because there is no prescriptive period for carry over of excess income tax payments

Section 76, NIRC.

The carry-over of excess income tax payments is no longer limited to the succeeding taxable year. Unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized. In addition, the option to carry-over excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded. *(Belle Corp. v. CIR, G.R. No. 181298, January 10, 2011)*

ii. Requirements for refund as laid down by cases

**Exceptions to requirement of a written claim:**

a. Necessity of written claim for refund

b. Claim containing a categorical demand for reimbursement

c. Filing of administrative claim for refund and the suit/proceeding before the CTA within 2 years from date of payment regardless of any supervening cause

**ABCD Corporation (ABCD) is a domestic corporation with individual and corporate shareholders who are residents of the United States. For the 2nd quarter of 1983, these U.S.- based individual and corporate stockholders received cash dividends from the corporation. The corresponding withholding tax on dividend income — 30% for individual and 35% for corporate non-resident stockholders — was deducted at source and remitted to the BIR.**

**On May 15,1984, ABCD filed with the Commissioner of Internal Revenue a formal claim for refund, alleging that under the RP-US Tax Treaty, the deduction withheld at source as tax on dividends earned was fixed at 25% of said income. Thus, ABCD asserted that it overpaid the withholding tax due on the cash dividends given to its non-resident stockholders in the U.S. the Commissioner denied the claim.**

**On January 17, 1985, ABCD filed a petition with the Court of Tax Appeals (CTA) reiterating its demand for refund.**

**Does ABCD Corporation have the legal personality to file the refund on behalf of its non-resident stockholders? Why or why not? (3%)**

**SUGGESTED ANSWER:**

Yes, withholding agents is not only an agent of the government but is also an agent of the taxpayer/income earner. Hence, ABCD is also an agent of the beneficial owner of the dividends with respect to the actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such for refund and to bring an action for recovery of such claim (CIR v. Procter & Gamble, 204 SCRA 377, {1991}) (BAR 2009)

iii. Legal basis of tax refunds
iv. Statutory basis for tax refund under the tax code
a. Scope of claims for refund
b. Necessity of proof for claim or refund

**International Technologies, Inc. (ITI) filed a claim for refund for unutilized input VAT with the Court of Tax Appeals (CTA). In the course of the trial, ITI engaged the services of an independent Certified Public Accountant (CPA) who examined the voluminous invoices and receipts of ITI. ITI offered in evidence only the summary prepared by the CPA, without the invoices and the receipts, and then submitted the case for decision.**

**Can the CTA grant ITI's claim for refund based only on the CPA's summary? Explain. (4%)**

**SUGGESTED ANSWER:**

No. The summary prepared by the CPA does not prove anything unless the documents which were the basis of the summary are submitted to the CTA and adduced in evidence. The invoices and receipts must be presented because they are the only real and direct evidence that would enable the Court to determine with particular certainty the basis of the refund (CIR v. Rio Tuba Nickel Mining Corp., 207SCRA S49[l992]). (BAR 2009)

c. Burden of proof for claim of refund
d. Nature of erroneously-paid tax/illegally assessed collected
e. Tax refund *vis-à-vis* tax credit

**Mirador, Inc., a domestic corporation, filed its Annual Income Tax Return for its taxable year 2008 on April 15, 2009. In the Return, it reflected an income tax overpayment of P1,000,000.00 and indicated its choice to carry-over the overpayment as an automatic tax credit against its income tax liabilities in subsequent years.**

**On April 15, 2010, it filed its Annual Income Tax Return for its taxable year 2009 reflecting a taxable loss and an income tax overpayment for the current year 2009 in the amount of P500,000.00 and its income tax overpayment for the prior year 2008 of P1,000,000.00.**

**In its 2009 Return, the corporation indicated its option to claim for refund the total income tax overpayment of P1,500,000.00**

**Choose which of the following statements is correct.**

**A. Mirador, Inc. may claim as refund the total income tax overpayment of P1,500,000.00 reflected in its income tax return for its taxable year 2009;**
**B. It may claim as refund the amount of P500,000.00 representing its income tax overpayment for its taxable year 2009; or**
**C. No amount may be claimed as refund. Explain the basis of your answer. (2010 Bar Question)**

**SUGGESTED ANSWER:**

b. It may claim as refund the amount of P500,000.00 representing its income tax overpayment for its taxable year 2009.

Since it has opted to carry-over the Php 1.0M overpaid income tax for taxable year 2008, said option is considered irrevocable and no application for cash refund shall be allowed for it.

**In its final adjustment return for the 2010 taxable year, ABC Corp. had excess tax credits arising from its over-withholding of income payments. It opted to carry over the excess tax credits to the following year. Subsequently, ABC Corp.**

**changed its mind and applied for a refund of the excess tax credits.**

**Will the claim for refund prosper? (2013 Bar Question)**

**SUGGESTED ANSWER:**
The claim for refund will not prosper as it is barred by the irrevocability rule.

Paragraph 2, Section 76 of the NIRC embodies the irrevocability rule. This rule provides that a corporation which is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry-over the excess credit; or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the corporation opts to carry-over its excess credit in the final adjustment return, its choice shall be irrevocable for that taxable period. The purpose of this rule is to prevent a taxpayer from claiming excess tax credits twice.

In the given problem, ABC Corp. opted to carry-over its excess tax credits for the 2010 taxable year. Consequently, ABC Corp. can no longer revoke its choice to carry-over the excess tax credits and instead claim for a refund.

f. Essential requisites for claim of refund

**State the conditions required by the Tax Code before the Commissioner of Internal Revenue could authorize the refund or credit of taxes erroneously or illegally received.**

**SUGGESTED ANSWER:**

The conditions are:

- A written claim for refund is filed by the taxpayer with the Commissioner of Internal Revenue. (Sec. 204, NIRC);
- The claim for refund must be a categorical demand for reimbursement. [Bermejo v. Collector of Internal Revenue, 87 Phil. 96 (1950)];
- The claim for refund or tax credit must be filed with the Commissioner, or the suit or proceeding therefore must be commenced in court within 2 years from date of payment of the tax or penalty regardless of any supervening cause (Sec. 229, NIRC). (BAR 2005)

v. Who may claim/apply for tax refund/tax credit
a. Taxpayer/withholding agents of non-resident foreign corporation

**ABCD Corporation (ABCD) is a domestic corporation with individual and corporate shareholders who are residents of the United States. For the 2nd quarter of 1983, these U.S.- based individual and corporate stockholders received cash dividends from the corporation. The corresponding withholding tax on dividend income — 30% for individual and 35% for corporate non-resident stockholders — was deducted at source and remitted to the BIR.**

**On May 15,1984, ABCD filed with the Commissioner of Internal Revenue a formal claim for refund, alleging that under the RP-US Tax Treaty, the deduction withheld at source as tax on dividends earned was fixed at 25% of said income. Thus, ABCD asserted that it overpaid the withholding tax due on the cash dividends given to its non-resident stockholders in the U.S. the Commissioner denied the claim.**

**On January 17, 1985, ABCD filed a petition with the Court of Tax Appeals (CTA) reiterating its demand for refund.**

**Does ABCD Corporation have the legal personality to file the refund on behalf of its non-resident stockholders? Why or why not? (3%)**

**SUGGESTED ANSWER:**

Yes, withholding agents is not only an agent of the government but is also an agent of the taxpayer/income earner. Hence, ABCD is also an agent of the beneficial owner of the dividends with respect to the actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such for refund and to bring an action for recovery of such claim (CIR v. Procter & Gamble, 204 SCRA 377, {1991}) (BAR 2009)

vi. Prescriptive period for recovery of tax erroneously or illegally collected

**As a general rule, within what period must a taxpayer elevate to the Court of Tax Appeals a denial of his application for refund of income tax overpayment? (2011 Bar Question)**

**(A) Within 30 days from receipt of the Commissioner's denial of his application for refund.**

**(B) Within 30 days from receipt of the denial which must not exceed 2 years from payment of income tax.**

**(C) Within 2 years from payment of the income taxes sought to be refunded.**

**(D) Within 30 days from receipt of the denial or within two years from payment.**

**SUGGESTED ANSWER:**

(B) Within 30 days from receipt of the denial which must not exceed 2 years from payment of income tax.

**In case of full or partial denial of the written claim for refund or excess input tax directly attributable to zero-rated sales, or the failure on the part of the Commissioner to act on the application within 120 days from the date of submission of complete documents, an appeal must be filed with the CTA:** (2012 BAR)

**a) Within thirty (30) days after filing the administrative claim with the BIR;**
**b) Within sixty (60) days after filing the administrative claim with the BIR;**
**c) Within one hundred twenty (120) days after filing the administrative claim with the BIR;**
**d) Within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the 120-day period.**

**SUGGESTED ANSWER:**

d) Within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the 120-day period.

In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days. *(CIR v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010)*

vii. Other consideration affecting tax refunds

**On April 16, 2012, the corporation filed its annual corporate income tax return for 2011, showing an overpayment of income tax of P1 Million which is to be carried over to the succeeding year(s). On May 15, 2012, the corporation sought advice from you and said that it contemplates to file an amended return for 2011, which shows that instead of carryover of the excess income tax payment, the same shall be considered as a claim for tax refund and the small box shown as "refund" in the return will be filled up. Within a year, the corporation will file the formal request for refund for the excess payment. (2012 BAR)**

a. **Will you recommend to the corporation such a course of action and justify that the amended return is the latest official act of the corporation as to how it may treat such overpayment of tax or should you consider the option granted to taxpayers as irrevocable, once previously exercised by it? Explain your answer.**
b. **Should the petition for review filed with the CTA on the basis of the amended tax return be denied by the BIR and the CTA, could the corporations till carry over such excess payment of income tax in the succeeding years, considering that there is no prescriptive period provided for in the income tax law with respect to carry over of excess income tax payments? Explain your answer.**

**Suggested Answer:**

a. NO. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such options shall be considered IRREVOCABLE for the taxable year period and no application for tax refund or issuance of tax credit certificate shall be allowed therefor (*Sec. 76, NIRC*).

b. YES. The carry-over of excess income tax payments is no longer limited to the succeeding taxable years until fully utilized. In addition, the option to carry-over excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded (*Belle Corp. v. CIR, G.R. No. 181298, Jan. 10, 2011*).

2. Government remedies
a. Administrative remedies
i. Tax lien
ii. Levy and sale of real property
iii. Forfeiture of real property to the government for want of bidder
iv. Further distraint and levy

**The BIR could not avail itself of the remedy of levy and distraint to implement, through collection, an assessment that has become final, executory, and demandable where:** (2011 Bar Question)
**(A) the subject of the assessment is an income tax.**
**(B) the amount of the tax involved does not exceed P100.00.**
**(C) the corporate taxpayer has no other uncollected tax liability.**
**(D) the taxpayer is an individual compensation income earner.**

**SUGGESTED ANSWER:**

(B) the amount of the tax involved does not exceed P100.00.

**Vanderful, Inc.'s income tax return for taxable year 2015 showed an overpayment due to excess creditable withholding taxes in the amount of ₱750,000.00. The company opted to carry over the excess income tax credits as tax credit against its quarterly income tax liabilities for the next succeeding years. For taxable year 2016, the company's income tax return showed an overpayment due to excess creditable withholding taxes in the amount of ₱1,100,000.00, which included the carry-over from year 2015 in the amount of ₱750,000.00 because its operations resulted in a net loss; hence, there was no application for any tax liability. This time, the company opted and marked the box "To *be refunded'* in respect of the total amount of ₱1,100,000.00.**

**Vanderful, Inc. now files in the BIR a claim for refund of unutilized overpayments of ₱1,100,00.00. Is the claim meritorious? (4%)**

***<u>SUGGESTED ANSWER:</u>***

No, the claim is not meritorious. Under Section 76 of the NIRC, once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor. The taxable period referred

to include the succeeding taxable years. Here, Vanderful already opted to carry over the excess income tax credits from 2015. Hence, such option is irrevocable during the taxable period, which includes 2016.

v. Suspension of business operation
vi. Non-availability of injunction to restrain collection of tax

b. Judicial remedies

3. Statutory offenses and penalties
a. Civil penalties
i. Surcharge

ii. Interest
a. In general
b. Deficiency interest
c. Delinquency interest
d. Interest on extended payment

4. Compromise and abatement of taxes
a. Compromise

b. Abatement

**Anion, Inc. received a notice of assessment and a letter from the BIR demanding the payment of P3 million pesos in deficiency income taxes for the taxable year 2008. The financial statements of the company show that it has been suffering financial reverses from the year 2009 up to the present. Its asset position shows that it could pay only P500,000.00 which it offered as a compromise to the BIR. Which among the following may the BIR require to enable it to enter into a compromise with Anion, Inc.?** (2011 Bar Question)

**(A) Anion must show it has faithfully paid taxes before 2009.**
**(B) Anion must promise to pay its deficiency when financially able.**
**(C) Anion must waive its right to the secrecy of its bank deposits.**
**(D) Anion must immediately deposit the P500,000.00 with the BIR.**

**SUGGESTED ANSWER:**

C) Anion must waive its right to the secrecy of its bank deposits.

**The Commissioner of Internal Revenue may NOT inquire into the bank deposits of a taxpayer, except:** (2012 BAR)

**a) When the taxpayer files a fraudulent return;**

**b) When the taxpayer offers to compromise the assessed tax based on erroneous assessment;**
**c) When the taxpayer offers to compromise the assessed tax based on financial incapacity to pay and he authorizes the Commissioner in writing to look into his bank records;**
**d) When the taxpayer did not file his income tax return for the year.**

**SUGGESTED ANSWER:**

c) When the taxpayer offers to compromise the assessed tax based on financial incapacity to pay and he authorizes the Commissioner in writing to look into his bank records;
Section 6(F), NIRC.

**Which statement below on compromise of tax liability is correct?** (2012 BAR)

**a) Compromise of a tax liability is available only at the administrative level;**
**b) Compromise of a tax liability is available only before trial at the CTA;**
**c) Compromise of a tax liability is available even during appeal, provided that prior leave of court is obtained;**
**d) Compromise of a tax liability is still available even after the court decision has become final and executory.**

**SUGGESTED ANSWER:**

c) Compromise of a tax liability is available even during appeal, provided that prior leave of court is obtained
RR 30-2002.

F. Organization and Function of the Bureau of Internal Revenue
1. Rule-making authority of the Secretary of Finance
a. Authority of Secretary of Finance to promulgate rules and regulations

**a. May the bank deposits – peso and foreign currency of the an individual taxpayer be disclosed by a commercial bank to the Commissioner of Internal Revenue, in connection with a tax investigation being conducted by revenue officials, without violating the relevant bank secrecy laws? Explain your answer. (2012 BAR)**
**b. In 2011, the Commissioner of the U.S. Internal Revenue Service (IRS) requested in writing the Commissioner of Internal Revenue to get the information from a bank in the Philippines, regarding the deposits of a U.S. Citizen residing in the Philippines, who is under examination by the officials of the US IRS, pursuant to the US-Philippine Tax Treaty and other existing laws. Should the BIR Commissioner agree to obtain such information from the bank and provide the same to the IRS? Explain your answer. (2012 BAR)**

c. **Is the bank secrecy law in the Philippines violated when the BIR issues a Warrant of Garnishment directed against a domestic bank, requiring it not to allow any withdrawal from any existing bank deposit of the delinquent taxpayer mentioned in the Warrant and to freeze the same until the tax delinquency of said taxpayer is settled with the BIR? Explain your answer. (2012 BAR)**

**Suggested Answer:**

a. No. As a general rule, bank deposits of an individual taxpayer may not be disclosed by a commercial bank to the Commissioner. As exceptions, the Commissioner is authorized to inquire into the bank deposits of:
    1. A decedent to determine his gross estate;
    2. Any taxpayer who has filed an application for compromise of his tax liability by reason of financial incapacity to pay his tax liability.

   In case a taxpayer files an application to compromise the payment of his tax liabilities on his claim that his financial position demonstrates a clear inability to pay the tax assessed, his application shall not be considered unless and until he waives in writing his privilege under RA 1405 (Bank Secrecy Law) or under other general or special laws, and such waiver shall constitute the authority of the Commissioner to inquire into the bank deposits of the tax payer (Sec. 6, NIRC).

b. YES. The Commissioner should agree to the request pursuant to the principle of international comity. The Commissioner of Internal Revenue has the authority to inquire into bank deposits accounts and related information held by financial institutions of a specific taxpayer subject of a request for the supply of tax information from a foreign tax authority pursuant to an international convention or agreement to which the Philippines is a signatory or party of *(Sec. 3, RA 10021).*

c. NO. Garnishment is an administrative remedy allowed by law to enforce a tax liability. Bank accounts shall be garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank. Upon receipt of the warrant of garnishment, the bank shall turnover to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government (*Sec. 208, NIRC*).

**MMM, Inc., a domestic telecommunications company, handles incoming telecommunications services for non-resident foreign companies by relaying international calls within the Philippines. To broaden the coverage of its telecommunications services throughout the country, MMM, Inc. entered into various interconnection agreements with local carriers. The non-resident foreign corporations pay MMM, Inc. in US dollars inwardly remitted through Philippine banks, in accordance with the rules and regulations of the*Bangko Sentral ng Pilipinas.***

**MMM, Inc. filed its Quarterly VAT Returns for 2000. Subsequently, MMM, Inc.**

**timely filed with the BIR an administrative claim for the refund of the amount of P6,321,486.50, representing excess input VAT attributable to its effectively zero-rated sales in 2000. The BIR ruled to deny the claim for refund of MMM, Inc. because the VAT official receipts submitted by MMM, Inc. to substantiate said claim did not bear the words "zero-rated" as required under Section 4.108-1 of Revenue Regulations (RR) No. 7-95. On appeal, the CTA division and the CT A *en bane* affirmed the BIR ruling.**

**MMM, Inc. appealed to the Supreme Court arguing that the NIRC itself did not provide for such a requirement. RR No. 7-95 should not prevail over a taxpayer's substantive right to claim tax refund or credit.**

**a. Rule on the appeal of MMM, Inc.**
**b. Will your answer in (a) be any different if MMM, Inc. was claiming refund of excess input VAT attributable to its effectively zero-rated sales in 2012?** (2015 Bar Question)

**SUGGESTED ANSWER:**

a. The appeal of MMM, Inc. must be denied. MMM, Inc.'s position that the requirements under RR No. 7-95 should not prevail over a taxpayer's substantive right to claim tax refund or credit is unmeritorious.

The Secretary of Finance has the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the NIRC. Such rules and regulations are given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.

An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. Consequently, the CTA and the CTA en banc correctly ruled that the failure to indicate the words "zero-rated" on the invoices and receipts issued by a taxpayer would result in the denial of the claim for refund or tax credit.

b. No. In *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, the Supreme Court ruled that the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113(B)(2)(c) of RA 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of administrative interpretation by reenactment.

b. Specific provisions to be contained in rules and regulations

c. Non-retroactivity of rulings

2. Power of the Commissioner to suspend the business operation of a taxpayer

**In "Operation Kandado," the BIR temporarily closed business establishments, including New Dynasty Corporation that failed to comply with VAT regulations. New Dynasty contends that it should not be temporarily closed since it has a valid and existing VAT registration, it faithfully issued VAT receipts, and filed the proper VAT returns. The contention may be rejected if the BIR investigation reveals that:** (2011 Bar Question)

**(A) the taxpayer has not been regularly filing its income tax returns for the past 4 years.**
**(B) the taxpayer deliberately filed a false and fraudulent return with deliberate intention to evade taxes.**
**(C) the taxpayer used falsified documents to support its application for refund of taxes.**
**(D) there was an understatement of taxable sales or receipts by 30% or more for the taxable quarter.**

**SUGGESTED ANSWER:**

D) there was an understatement of taxable sales or receipts by 30% or more for the taxable quarter.

III. Local Government Code of 1991, as amended
A. Local government taxation
1. Fundamental principles

**Which of the following statements is NOT a test of a valid ordinance? (2012 BAR)**
**a) It must not contravene the Constitution or any statute;**
**b) It must not be unfair or oppressive;**
**c) It must not be partial or discriminatory;**
**d) It may prohibit or regulate trade.**

**SUGGESTED ANSWER:**

d) It may prohibit or regulate trade.
To be valid, an ordinance must not prohibit but may regulate trade. *(Magtajas v. Pryce Properties Corporation, Inc., G.R. No. 111097, July 20, 1994).*

2. Nature and source of taxing power

a. Grant of local taxing power under the local government code
b. Authority to prescribe penalties for tax violations
c. Authority to grant local tax exemptions

**May the deficiency business tax be paid in installments without surcharge and interest? Explain. (3%)**

**SUGGESTED ANSWER:**

Yes. Local government units may, through ordinances duly approved, grant reliefs to taxpayers under such terms and conditions as they may deem necessary. Such reliefs may take the form of condonation or extension of time for payment or non-imposition of surcharge or interest. (Section 192, LGC). Accordingly, the deficiency business taxes may be paid in installment without surcharge and interest through the passage of an ordinance for that purpose. (BAR 2008)

d. Withdrawal of exemptions
e. Authority to adjust local tax rates
f. Residual taxing power of local governments
g. Authority to issue local tax ordinances

**Prior to the enactment of the Local Government Code, consumer's cooperatives registered under the Cooperative Development Act enjoyed exemption from all taxes imposed by a local government. With the Local Government Code's withdrawal of exemptions, could these cooperatives continue to enjoy such exemption?** (2011 Bar Question)

**(A) Yes, because the Local Government Code, a general law, could not amend a special law such as the Cooperative Development Act.**
**(B) No, Congress has not by the majority vote of all its members granted exemption to consumers' cooperatives.**
**(C) No, the exemption has been withdrawn to level the playing field for all taxpayers and preserve the LGUs' financial position.**
**(D) Yes, their exemption is specifically mentioned among those not withdrawn by the Local Government Code.**

**SUGGESTED ANSWER:**

(D) Yes, their exemption is specifically mentioned among those not withdrawn by the Local Government Code.

**Taxing power of local government units shall NOT extend to the following taxes, except one: (2012 BAR)**

**a) Income tax on banks and other financial institutions;**
**b) Taxes of any kind on the national government, its agencies and instrumentalities, and local government units;**
**c) Taxes on agricultural and aquatic products when sold by the marginal farmers or fishermen;**
**d) Excise taxes on articles enumerated under the National Internal Revenue Code.**

**SUGGESTED ANSWER:**
a) Income tax on banks and other financial institutions Section 186, RA 7160.

3. Local taxing authority
a. Power to create revenues exercised through Local Government Units
b. Procedure for approval and effectivity of tax ordinances

4. Scope of taxing power

**BATAS Law is a general professional partnership operating in the City of Valenzuela. It regularly pays value-added tax on its services. All its lawyers have individually paid the required professional tax for the year 2017. However, as a condition for the renewal of its business permit for the year 2017, the City Treasurer of Valenzuela assessed BAT AS Law for the payment of percentage business tax on its gross receipts for the year 2016 in accordance with the *Revenue Tax Code* of Valenzuela.**

**Is BATAS Law liable to pay the assessed percentage business tax? Explain your answer. (3%) (2017 BAR)**

***SUGGESTED ANSWER:***
No, BATAS Law is not liable to pay the assessed percentage business tax. Under Section 133 of the Local Government Code, local government units cannot levy percentage or value-added taxes on sale of services. Here, BATAS Law's income comes directly from its services, on which no percentage tax may be levied by Valenzuela City. Hence, BATAS Law is not liable to pay the assessed percentage business tax.

5. Specific taxing power of Local Government Units
a. Taxing powers of provinces
i. Tax on transfer of real property ownership
ii. Tax on business of printing and publication
iii. Franchise tax

iv. Tax on sand, gravel and other quarry services
v. Professional tax

**What is the tax base for the imposition by the province of professional taxes? (2011 Bar Question)**
**(A) That which Congress determined.**
**(B) The pertinent provision of the local Government Code.**
**(C) The reasonable classification made by the provincial sanggunian.**
**(D) That which the Dept. of Interior and Local Government determined.**

**SUGGESTED ANSWER:**

(C) The reasonable classification made by the provincial sanggunian.

**The City of Manila enacted Ordinance No. 55-66 which imposes a municipal occupation tax on persons practicing various professions in the city. Among those subjected to the occupation tax were lawyers. Atty. Mariano Batas, who has a law office in Manila, pays the ordinance-imposed occupation tax under protest. He goes to court to assail the validity of the ordinance for being discriminatory. Decide with reasons. (3%)**

**SUGGESTED ANSWER:**

The ordinance is valid. The tax imposed by the ordinance is in the nature of a professional tax which is authorized by law to be imposed by cities (Section 151 in relation to Section 139, LGC). The ordinance is not discriminatory because the City Council has the power to select the subjects of taxation and impose the same tax on those belonging to the same class. The authority given by law to cities is to impose a professional tax only on persons engaged in the practice of their profession requiring government examination and lawyers are included within that class of professionals. (BAR 2009)

vi. Amusement tax
vii. Tax on delivery truck/van

b. Taxing powers of cities

**Ferremaro, Inc., a manufacturer of handcrafted shoes, maintains its principal office in Cubao, Quezon City. It has branches/sales offices in Cebu and Davao. Its factory is located in Marikina City where most of its workers live. Its principal office in Quezon City is also a sales office.**

**Sales of finished products for calendar year 2009 in the amount of P10 million were made at the following locations:**

**1) Cebu branch 25%**
**2) Davao branch 15%**
**3) Quezon City branch 60%**
**Total 100%**

**Where should the applicable local taxes on the shoes be paid? Explain.** (2010 Bar Question)

**SUGGESTED ANWER:**
Under the LGC, the manufacturers maintaining a branch or sales outlet shall record the sale in the branch or sales outlet making the sale and pay the tax in the city or

municipality where the branch or sales outlet is located. Since Ferremaro, Inc., maintains one factory, the sales recorded in the principal office shall be allocated and 30% of said sales are taxable in the place where the principal office is located while the 70% is taxable in the place where the factory is located.

Hence, 25% of total sales or Php 2.5M shall be taxed in Cebu and 15% of total sales or Php 1.5M shall be taxed in Davao. For the remaining 60% sales amounting to Php 6.0M which is recorded in the principal office, 30% thereof or Php 1.8M is taxable in Quezon City where the principal office is located and 70% or Php 4.2M is taxable in Marikina City where the factory is located.

**XYZ Shipping Corporation is a branch of an international shipping line with voyages between Manila and the West Coast of the U.S. The company's vessels load and unload cargoes at the Port of Manila, albeit it does not have a branch or sales office in Manila. All the bills of lading and invoices are issued by the branch office in Makati which is also the company's principal office.**

**The City of Manila enacted an ordinance levying a 2% tax on gross receipts of shipping lines using the Port of Manila.**

**Can the City Government of Manila legally impose said levy on the corporation? Explain.** (2010 Bar Question)

**SUGGESTED ANSWER:**

No, Manila cannot legally levy the 2% Gross Receipts Tax on thi shipping line because taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, and or water is beyond the taxing powers of the local government units.

**The City Government of Manila may NOT impose:**
**a) Basic real property tax at 2% of the assessed value of real property;**
**b) Additional levy on real property for the special education fund at 1% of the assessed value of real property;**
**c) Additional ad valorem tax on idle lands at a rate not exceeding 5% of the assessed value;**
**d) Special levy on lands within its territory specially benefited by public works projects or improvements funded by it at 80% of the actual cost of the projects or improvements.**

**SUGGESTED ANSWER:**

d) Special levy on lands within its territory specially benefited by public works projects or improvements funded by it at 80% of the actual cost of the projects or improvements Section 240, RA 7160.

**ABC Corporation is registered as a holding company and has an office in the City of Makati. It has no actual business operations. It invested in another company and its earnings are limited to dividends from this investment, interests on its bank deposits, and foreign exchange gains from its foreign currency account. The City of Makati assessed ABC Corporation as a contractor or one that sells services for a fee. Is the City of Makati correct?** (2013 Bar Question)

**SUGGESTED ANSWER:**

The City of Makati is wrong in assessing ABC Corp. as a contractor.

First, ABC Corp. is not a contractor as defined in Section 131(h) of Republic Act No. 7160 or the Local Government Code (LGC). This provision defines a contractor as a person, natural or juridical, not subject to professional tax under the LGC, but whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.

In the given problem, ABC Corp. is merely a holding company whose earnings are limited to dividends, interests on bank deposits and foreign exchange gains from foreign currency account. Evidently, ABC Corp. is not engaged in the sale of services for a fee.

Second, Section 186 of LGC provides that local government units cannot levy taxes, fees or charges on any base or subject tax under the provisions of the NIRC.

In the given problem, ABC Corp.'s dividends, interest income and foreign exchange gains from foreign currency account are already subject to final income tax under the NIRC, specifically, Sections 27(D)(4), 27(D)(1), 32(A), respectively. Consequently, the City of Makati cannot levy from ABC Corp. taxes on these incomes.

c. Taxing powers of municipalities

i. Tax on various types of businesses
ii. Ceiling on business tax impossible on municipalities within Metro Manila
iii. Tax on retirement on business

**How are retiring businesses taxed under the Local Government Code? (2%)**

**SUGGESTED ANSWER:**

Retiring business under the LGC are taxed on their gross sales or gross receipts in the current year and not on the preceding year. If the tax paid in the current year is less than the tax due on gross sales or receipts of the current year, the difference shall be paid before the business is considered officially retired (Sec. 145, LGC).

iv. Rules on payment of business tax

**What is the basis for the computation of business tax on contractors under the local government code? (2%)**

**SUGGESTED ANSWER:**

The business tax on contractors is a graduated annual fixed tax based on the gross receipts for the preceding calendar year. However, when the gross receipts amount to P2 million or more, the business tax on contractors is imposed as a percentage tax at the rate of 50% of 1% (Sec. 143(e), LGC).

v. Fees and charges for regulation & licensing

**The Sangguniang Bayan of the Municipality of Sampaloc, Quezon, passed an ordinance imposing a storage fee of ten centavos (PO. 10) for every 100 kilos of copra deposited in any bodega within the Municipality's jurisdiction. The Metropolitan Manufacturing Corporation (MMC), with principal office in Makati, is engaged in the manufacture of soap, edible oil, margarine, and other coconut oil-based products. It has a warehouse in Sampaloc, Quezon, used as storage space for the copra purchased in Sampaloc and nearby towns before the same is shipped to Makati. MMC goes to court to challenge the validity of the ordinance, demanding the refund of the storage fees it paid under protest.**

**Is the ordinance valid? Explain your answer. (4%)**

**SUGGESTED ANSWER:**

Yes. The municipality is authorized to impose reasonable fees and charges as a regulatory measure in an amount commensurate with the cost of regulation, inspection and licensing (Section 147, LGC). In the case at bar, the storage of copra in any warehouse within the municipality can be the proper subject of regulation pursuant to the police power granted to municipalities under the Revised Administrative Code or the "general welfare clause". A warehouse used for keeping or storing copra is an establishment likely to endanger the public safety or likely to give rise to conflagration because the oil content of the copra, when ignited, is difficult to put under control by water and the use of chemicals is necessary to put out the fire. It is, thus, reasonable that the Municipality impose storage fees for its own surveillance and lookout (Procter & Gamble Philippine Manufacturing Corporation v. Municipality of Jagna, Province of Bohol, 94 SCRA 894 [1979]). (BAR 2009)

vi. Situs of tax collected

**Which statement is correct?** (2012 BAR)

**a) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as resolutions and ordinances;**
**b) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as resolutions;**
**c) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as ordinances;**
**d) Both ordinances and resolutions are solemn and formal acts.**

**SUGGESTED ANSWER:**

c) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as ordinances
Section 2227, Revised Administrative Code of 1917.

**One of the local government units below does NOT have the power to impose real property tax:** (2012 BAR)
**a) Bacoor, Cavite;**
**b) Davao City;**
**c) Tarlac Province;**
**d) Malabon, Metro Manila.**

**SUGGESTED ANSWER:**

a) Bacoor, Cavite
Section 200, RA 7160.
*[Note: The answer above is premised on the belief that Bacoor is a municipality and the LGC does not vest municipalities with the power to impose real property taxes, except for municipalities within the Metropolitan Manila area. However, Bacoor is already a city hence, can no longer be a correct choice. Since the question did not provide for the CORRECT answer, it should be treated as a bonus.]*

d. Taxing powers of barangays

**After the province has constructed a barangay road, the Sangguniang Panglalawigan may impose a special levy upon the lands specifically benefitted by the road up to an amount not to exceed:** (2011 Bar Question)

**(A) 60% of the actual cost of the road without giving any portion to the barangay.**
**(B) 100% of the actual project cost without giving any portion to the barangay.**
**(C) 100% of the actual project cost, keeping 60% for the province and giving 40% to the barangay.**
**(D) 60% of the actual cost, dividing the same between the province and the barangay.**

**SUGGESTED ANSWER:**
(A) 60% of the actual cost of the road without giving any portion to the barangay.

e. Common revenue raising powers
i. Service fees and charges
ii. Public utility charges
iii. Toll fees or charges

f. Community tax

6. Common limitations on the taxing powers of LGUs

**Pheleco is a power generation and distribution company operating mainly from the City of Taguig. It owns electric poles which it also rents out to other companies that use poles such as telephone and cable companies. Taguig passed an ordinance imposing a fee equivalent to 1% of the annual rental for these poles. Pheleco questioned 'the legality of the ordinance on the ground that it imposes an income tax which local government units (LGUs) are prohibited from imposing.**

**Rule on the validity of the ordinance. (1%)(2013 Bar Question)**

**(A) The ordinance is void; the fee is based on rental income and is therefore a tax on income.**
**(B) The ordinance is valid as a legitimate exercise of police power to regulate electric poles.**
**(C) The ordinance is void; 1% of annual rental is excessive and oppressive.**
**(D) The ordinance is valid; an LGU may impose a tax on income.**

**SUGGESTED ANSWER:**

(A) The ordinance is void; the fee is based on rental income and is therefore a tax on income.
The Sec. 32(A)(5) of the NIRC includes "rents" in the enumeration of taxable income. Under Section 133 of the LGC, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax except when levied on banks and other financial institutions.

**In accordance with the Local Government Code (LGC), the Sangguniang Panglungsod (SP) of Baguio City enacted Tax Ordinance No. 19, Series of 2014, imposing a P50.00 tax on all the tourists and travellers going to Baguio City. In imposing the local tax, the SP reasoned that the tax collected will be used to maintain the cleanliness of Baguio City and for the beautification of its tourist attractions. (D) is punishable by administrative penalty only.**

**Claiming the tax to be unjust, Baguio Travellers Association (BTA), an association of travel agencies in Baguio City, filed a petition for declaratory relief before the Regional Trial Court (RTC) because BTA was apprehensive that**

**tourists might cancel their bookings with BTA's member agencies. BTA also prayed for the issuance of a Temporary Restraining Order (TRO) to enjoin Baguio City from enforcing the local tax on their customers and on all tourists going to Baguio City.**

**The RTC issued a TRO enjoining Baguio City from imposing the local tax. Aggrieved, Baguio City filed a petition for certiorari before the Supreme Court (SC) seeking to set aside the TRO issued by the RTC on the ground that collection of taxes cannot be enjoined. Will the petition prosper?** (2014 Bar Question)

**SUGGESTED ANSWER :**

No, the petition for *certiorari* filed by Baguio City will not prosper. As stated in Valley Trading Co., Inc. v. CFI of Isabela (G.R. No. L-49529, March 31, 1989) and Angeles City v. Angeles City Electric Corporation (G.R. No. 166134, June 29, 2010), the prohibition on the issuance of an order or writ enjoining the collection of taxes applies only to national internal revenue taxes, and not to local taxes. Unlike the NIRC, there is no express provision in the Local Government Code which prohibits courts from enjoining the collection of such taxes. Therefore, the RTC was properly vested with authority to issue the assailed TRO enjoining Baguio City from imposing the local tax.

**In 2014, M City approved an ordinance levying customs duties and fees on goods coming into the territorial jurisdiction of the city. Said city ordinance was duly published on February 15, 2014 with effectivity date on March 1, 2014.**

**a. Is there a ground for opposing said ordinance?**
**b. What is the proper procedural remedy and applicable time periods for challenging the ordinance?** (2015 Bar Question)

**SUGGESTED ANSWER:**

a. Yes, on the ground that the ordinance is ultra-vires. The taxing powers of local government units, such as M City, cannot extend to the levy of taxes, fees and charges already imposed by the national government, and this include, among others, the levy of customs duties under the Tariff and Customs Code.

b. Any question on the constitutionality or legality of tax ordinances may be raised on appeal within thirty (30) days from the effectivity to the Secretary of Justice. The Secretary of Justice shall render a decision within sixty (60) days from the date of receipt of the appeal. Thereafter, within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file the appropriate proceedings with the Regional Trial Court.

**The City of Maharlika passed an ordinance imposing a tax on any sale or transfer of real property located within the city at a rate of fifty percent (50%) of one percent (1%) of the total consideration of the transaction. Jose sold a parcel of land in the city, which he inherited from his deceased parents, and refused to pay the aforesaid tax. He instead filed a case asking that the ordinance be declared null and void since the tax it imposed can only be collected by the national government, as in fact he has paid the Bureau of Internal Revenue (BIR) the required capital gains tax. If you were the City Legal Officer of Maharlika, what defenses would you raise to sustain the validity of the ordinance? (5%) (2016 BAR)**

***SUGGESTED ANSWER:***

I would argue that the City is allowed to levy a tax on transfer of real property ownership (Sec. 135, LGC). The capital gains tax which is an income tax collected by the national government is entirely different from the tax on sale or transfer imposed by the ordinance. The tax imposed by the ordinance not being in the nature of an income tax, the imposition of the income tax by the national government will not pre-empt the tax sought to be imposed by the ordinance. I would further argue that the imposition by the national government of a tax will pre-empt Local Government Units (LGU) only if there is no specific provision under the Local Government Code giving said power (Bulacan v. CA, G.R. No. 126232, November 1998, 299 SCRA 442)

7. Collection of business tax
a. Tax period and manner of payment
b. Accrual of tax

**What is the basis for the computation of business tax on contractors under the Local Government Code?** (2010 Bar Question)

**SUGGESTED ANSWER:**

The business tax on contractors is a graduated annual fixed tax based on the gross receipts for the preceding calendar year. If the gross receipts amount to more than Php 2.0 Million the business is subject to a percentage tax at the rate of 50% of 1%.

**How are retiring businesses taxed under the Local Government Code?** (2010 Bar Question)

**SUGGESTED ANSWER:**

They are taxed on their sales or gross receipts in the current year and not on the preceding year. If the tax paid in the current year is less than the tax due on gross sales or receipts of the current year, the difference shall be paid before the business is

considered officially retired.

c. Time of payment
d. Penalties on unpaid taxes, fees or charges
e. Authority of treasurer in collection and inspection of books

8. Taxpayer's remedies
a. Judicial

b. Administrative

c. Periods of assessment and collection of local taxes, fees or charges
d. Protest of assessment

**Doña Evelina, a rich widow engaged in the business of currency exchange, was assessed a considerable amount of local business taxes by the City Government of Bagnet by virtue of Tax Ordinance No. 24. Despite her objections thereto, Doña Evelina paid the taxes. Nevertheless, unsatisfied with said Tax Ordinance, Doña Evelina, through her counsel Atty. ELP, filed a written claim for recovery of said local business taxes and contested the assessment. Her claim was denied, and so Atty. ELP elevated her case to the Regional Trial Court (RTC).**

**The RTC declared Tax Ordinance No. 24 null and void and without legal effect for having been enacted in violation of the public ation requirement of tax ordinances and revenue measures under the Local Government Code (LGC) and on the ground of double taxation. On appeal, the Court of Tax Appeals (CTA) affirmed the decision of the RTC. No motion for reconsideration was filed and the decision became final and executory. (4%)**

**(A) If you are Atty. ELP, what advice will you give Doña Evelina so that she can recover the subject local business taxes?**

**(B) If Doña Evelina eventually recovers the local business taxes, must the same be considered as income taxable by the national government?** (2014 Bar Question)

**SUGGESTED ANSWER :**

(A) Move for the execution of the judgment which has already become final.

(B) Yes, subject to the tax benefit rule. The local business tax paid is a business-connected tax hence, deductible from gross income. If at the time of its deduction it resulted to a tax benefit to *Dona Evelina*, then the recovery will form part of gross income to the extent of the tax benefit on the previous deduction (*Section 34(C)(1), NIRC).*

c. Claim for refund of tax credit for erroneously or illegally collected tax, fee or charge

**Where the real property tax assessment is erroneous, the remedy of the property owner is:** (2012 BAR)

**a) To file a claim for refund in the Court of Tax Appeals if he has paid the tax, within thirty (30) days from date of payment;**
**b) To file an appeal with the Provincial Board of Assessment Appeals within thirty (30) days from receipt of the assessment;**
**c) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment;**
**d) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment and playing the assessed tax under protest.**

**SUGGESTED ANSWER:**

c) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment;
Section 226, RA 7160.

9. Civil remedies by the LGU for collection of revenues
a. Local government's lien for delinquent taxes, fees or charges
b. Civil remedies, in general

i. Administrative action

ii. Judicial action

**Which statement on prescriptive periods is true?** (2012 BAR)

**a) The prescriptive periods to assess taxes in the National Internal Revenue Code and the Local Government Code are the same;**
**b) Local taxes shall be assessed within five (5) years from the date they became due;**
**c) Action for the collection of local taxes may be instituted after the expiration of the period to assess and to collect the tax;**
**d) Local taxes may be assessed within ten (10) years from discovery of the underpayment of tax which does not constitute fraud.**

**SUGGESTED ANSWER:**

b) Local taxes shall be assessed within five (5) years from the date they became due;
Section 194, RA 7160.

B. Real property taxation

**Anktryd, Inc., bought a parcel of land in 2009 for P7 million as part of its inventory**

**of real properties. In 2010, it sold the land for P12 million which was its zonal valuation. In the same year, it incurred a loss of P6 million for selling another parcel of land in its inventory. These were the only transactions it had in its real estate business. Which of the following is the applicable tax treatment?** (2011 Bar Question)

**(A) Anktryd shall be subject to a tax of 6% of P12 million.**
**(B) Anktryd could deduct its P6 million loss from its P5 million gain.**
**(C) Anktryd's gain of P5 million shall be subject to the holding period.**
**(D) Anktryd's P6 million loss could not be deducted from its P5 million gain.**

**SUGGESTED ANSWER:**

(B) Anktryd could deduct its P6 million loss from its P5 million gain.

1. Fundamental principles

2. Nature of real property tax
3. Imposition of real property tax

a) Power to levy real property tax
b) Exemption from real property tax

**A municipality may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement only if:** (2011 Bar Question)
**(A) the real property is within the Metropolitan Manila Area.**
**(B) the real property is located in the municipality.**
**(C) the DILG authorizes it to do so.**
**(D) the power is delegated to it by the province.**

**SUGGESTED ANSWER:**

(A) the real property is within the Metropolitan Manila Area.

**Real property owned by the national government is exempt from real property taxation unless the national government: (2011 Bar Question)**
**(A) transfers it for the use of a local government unit.**
**(B) leases the real property to a business establishment.**
**(C) gratuitously allows its use for educational purposes by a school established for profit.**
**(D) sells the property to a government-owned non-profit corporation.**

**SUGGESTED ANSWER:**

(B) leases the real property to a business establishment.

**The Manila International Airport Authority (MIAA) is exempt from real property tax. Which statement below is NOT correct?** (2012 BAR)

**a) MIAA is not a government-owned or controlled corporation because it is not organized as a stock or non-stock corporation;**
**b) MIAA is a government instrumentality vested with corporate powers and performing essential public services;**
**c) MIAA is not a taxable entity because the real property is owned by the Republic of the Philippines and the beneficial use of such property has not been granted to a private entity;**
**d) MIAA is a government-owned or controlled corporation because it is required to meet the test of economic viability.**

**SUGGESTED ANSWER:**

d) MIAA is a government-owned or controlled corporation because it is required to meet the test of economic viability.
MIAA v. City of Pasay. G.R. No. 163072, April 2, 2009.

**For purposes of real property taxes, the tax rates are applied on:** (2012 BAR)
**a) Zonal values; b) Fair market value; c) Assessed values; d) Reproduction values.**

**SUGGESTED ANSWER:**

c) Assessed values
Section 233, RA 7160.

4. Appraisal and assessment of real property tax
a. Rule on appraisal of real property at fair market value
b. Declaration of real property
c. Listing of real property in assessment rolls
d. Preparation of schedules of fair market value
    i. Authority of assessor to take evidence
    ii. Amendment of schedule of fair market value
e. Classes of real property
f. Actual use of property as basis of assessment

**Q: Mr. Jose Castillo is a resident Filipino Citizen. He purchased a parcel of land in Makati City in 1970 at a consideration of P1 Million. In 2011, the land, which remained undeveloped and idle, had a fair market value of P20Million. Mr. Antonio Ayala, another Filipino citizen, is very much interested in the property and he offered to buy the same for P20 Million. The Assessor of Makati City re-assessed in 2011 the property at P10 Million.**

**a. When is Mr. Castillo liable for real property tax on the land beginning 2011 or beginning 2012? Explain your answer.**
**b. Is Mr. Castillo liable for income tax in 2011 based on the offer to buy by Mr. Ayala? Explain your answer.**
**c. Should Mr. Castillo agree to sell the land to Mr. Ayala in 2012 for P20 Million, subject to the condition as stated in The Deed of Sale that the buyer shall assume the capital gains tax thereon, how much is the income tax due on the transaction and when must the tax return be filed and the tax be paid by the taxpayer? Explain your answer. (2012)**

**Suggested Answer:**
a. Mr. Castillo shall be liable to the real property tax based on the re-assessment beginning 2012. All re-assessment made after the first day of any year shall take effect on the first day of January of the succeeding year *(Sec. 221, LGC)*.
b. NO. Mr. Castillo is not liable for income tax in 2011 because no income is realized by him during that year. Tax liability for income tax attaches only if there is a gain realized resulting from a closed and complete transaction *(Madrigal v. Rafferty, G.R. No. L-12287, August 7, 1918)*.
*b.* He shall be liable to pay 6% capital gains tax (CGT) based on the **Gross Selling Price of the Property** which is **20 Million plus the GCT assumed by the buyer**. He should file the return within 30 days from date of the sale (date of notarization) and shall pay the tax as he files the return *(Sec. 24(D), NIRC).*

**ALTERNATIVE ANSWER:**
c. The income tax due on the transaction is P1,276,595.74 which is computed as 6% of the Gross Selling Price (GSP). The tax based of the 6% capital gains tax (CGT) is the higher between the GSP and the fair market value (FMV). The GSP is 20 Million plus the CGT to be assumed by the buyer, following the doctrine of constructive receipt of income or a total of P21,276,595.74, which amount is higher than the FMV of P20 Million.

**Republic Power Corporation (RPC) is a government- owned and controlled corporation engaged in the supply, generation and transmission of electric power. In 2005, in order to provide electricity to Southern Tagalog provinces, RPC entered into an agreement with Jethro Energy Corporation (JEC), for the lease of JEC's power barges which shall be berthed at the port of Batangas City. The contract provides that JEC shall own the power barges and the fixtures, fittings, machinery, and equipment therein, all of which JEC shall supply at its own cost, and that JEC shall operate, manage and maintain the power barges for the purpose of converting the fuel of RPC into electricity. The contract also stipulates that all real estate taxes and assessments, rates and other charges, in respect of the power barges, shall be for the account of RPC.**

**In 2007, JEC received an assessment of real property taxes on the power barges from the Assessor of Batangas City. JEC sought reconsideration of the assessment on the ground that the power barges are exempt from real estate**

**taxes under Section 234 [c] of R.A. 7160 as they are actually, directly and exclusively used by RPC, a government-owned and controlled corporation. Furthermore, even assuming that the power barges are subject to real property tax, RPC should be held liable therefore, in accordance with the terms of the lease agreement. Is the contention of JEC correct? Explain your answer. (4%)**

**SUGGESTED ANSWER:**

The contention of JEC is not correct. The owner of the power barges is JEC which is required to operate, manage and maintain the power barges for the purpose the claim that RPC, a government-owned and controlled corporation engaged in the supply, generation and transmission of electric power, is the actual, direct and exclusive user of the barge, hence, does not fall within the purview of the exempting provision of Section 234[c] of R.A. 7160. Likewise, the argument that RPC should be liable to the real property taxes consonant with the contract is devoid of merit. The liability for the payment of the real estate taxes is determined by law and not by the agreement of the parties (FELS Energy Inc. P. The Province of Batangas, 516 SCRA 186 [2007]). (BAR 2009)

g. Assessment of real property
i. Assessment levels
ii. General revisions of assessments and property classification
iii. Date of effectivity of assessment or reassessment
iv. Assessment of property subject to back taxes
v. Notification of new or revised assessment
h. Appraisal and assessment of machinery

**The appraisal, assessment, levy and collection of real property tax shall be guided by the following principles. Which statement does NOT belong here?** (2012 BAR)

**a) Real property shall be appraised at its current and fair market value;**
**b) Real property shall be classified for assessment purposes on the basis of its actual use;**
**c) Real property shall be assessed on the basis of a uniform classification within each local political subdivision;**
**d) The appraisal and assessment of real property shall be based on audited financial statements of the owner.**

**SUGGESTED ANSWER:**
d) The appraisal and assessment of real property shall be based on audited financial statements of the owner.
Section 198, RA 7160.

5. Collection of real property tax
a) Date of accrual of real property tax and special levies
b) Collection of tax

(i) Collecting authority
(ii) Duty of assessor to furnish local treasurer with assessment rolls
(iii) Notice of time for collection of tax
c) Periods within which to collect real property tax
d) Special rules on payment
(i) Payment of real property tax in installments
(ii) Interests on unpaid real property tax
(iii) Condonation of real property tax
e) Remedies of LGUs for collection of real property tax

ii) Local government's lien
iii) Remedies in general

iv) Resale of real estate taken for taxes, fees or charges
v) Further levy until full payment of amount due

6. Refund or credit of real property tax
a. Payment under protest
b. Repayment of excessive collections

**Apparently the law does not provide for the refund of real property taxes that have been collected as a result of an erroneous or illegal assessment by the provincial or city assessor. What should be done in such instance to avoid an injustice? (2011 Bar Question)**
**(A) Question the legality of the no-refund rule before the Supreme Court.**
**(B) Enact a new ordinance amending the erroneous or illegal assessment to correct the error.**
**(C) Subsequent adjustment in tax computation and the application of the excess payment to future real property tax liabilities.**
**(D) Pass a new ordinance providing for the refund of real property taxes that have been erroneously or illegally collected.**

**SUGGESTED ANSWER:**

C) Subsequent adjustment in tax computation and the application of the excess payment to future real property tax liabilities.

7. Taxpayer's remedies
a) Contesting an assessment of value of real property

**Madam X owns real property in Caloocan City. On July 1, 2014, she received a notice of assessment from the City Assessor, informing her of a deficiency tax on her property. She wants to contest the assessment. (4%)**

**(A) What are the administrative remedies available to Madam X in order to contest the assessment and their respective prescriptive periods?**

**(B) May Madam X refuse to pay the deficiency tax assessment during the pendency of her appeal?** (2014 Bar Question)

**SUGGESTED ANSWER :**

(A) The administrative remedies available to *Madam X* to contest the assessment and their respective prescriptive periods are as follows:

1. Pay the deficiency real property tax under protest (*Section 252, LGC);*
2. File the protest with the local treasurer – The protest in writing muse be filed within thirty (30) days from payment of the tax to the provincial, city, or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt (*Section 252, LGC);*
3. Appeal to the LBAA – If protest is denied or upon the lapse of the 60-day period for the treasurer to decide, the taxpayer may appeal to the LBAA within 60 days and the case decided within 120 days (*Section 226 & 229,* LGC)
4. Appeal to the CBAA – If not satisfied with the decision of the LBAA, appeal to the CBAA within 30 days from receipt of a copy of the decision (*Section 229(c), LGC).*

(B) No. The payment of the deficiency tax is a condition before she can protest the deficiency assessment. It is the decision on the protest or inaction thereon that gives her the right to appeal. This means that she cannot refuse to pay the deficiency tax assessment during the pendency of the appeal because it is the payment itself which gives rise to the remedy. The law provides that no protest (which is the beginning of the disputation process) shall be entertained unless the taxpayer first pays the tax (*Section 252, LGC).*

i. Appeal to the Local Board of Assessment Appeals
ii. Appeal to the Central Board of Assessment Appeal

iii. Effect of payment of tax
b. Payment of real property tax under protest

(i) File protest with local treasurer
(ii) Appeal to the Local Board of Assessment Appeals
(iii) Appeal to the Central Board of Assessment Appeals
(iv) Appeal to the CTA
(v) Appeal to the Supreme Court

IV. Tariff and Customs Code of 1978, as amended
A. Tariff and duties, defined
B. General rule: all imported articles are subject to duty.
1. Importation by the government taxable

**Under the Tariff and Customs Code, abandoned imported articles becomes the property of the:** (2011 Bar Question)
**(A) government whatever be the circumstances.**
**(B) insurance company that covered the shipment.**
**(C) shipping company in case the freight was not paid.**
**(D) bank if the shipment is covered by a letter of credit.**

**SUGGESTED ANSWER:**

(A) government whatever be the circumstances.

C. Purpose for imposition
D. Flexible tariff clause

E. Requirements of importation
**1.** Beginning and ending of importation

**Amaretto, Inc., imported 100 cases of Marula wine from South Africa. The shipment was assessed duties and value-added taxes of P300,000 which Amaretto, Inc. immediately paid. The Bureau of Customs did not, however, issue the release papers of the shipment yet since the Food and Drug Administration (FDA) needed to test the suitability of the wine for human consumption. Is the Bureau of Customs at fault for refusing to release the shipment just as yet? (2011 Bar Question)**
**(A) Yes, because the importation was already terminated as a result of the payment of the taxes due.**
**(B) Yes, the Bureau of Customs is estopped from holding the release of the shipment after receiving the payment.**
**(C) No, if the amount paid as duties and value-added taxes due on the importation was insufficient.**
**(D) No, because the Bureau of Customs has not yet issued the legal permit for withdrawal pending the FDA's findings.**

**SUGGESTED ANSWER:**

(D) No, because the Bureau of Customs has not yet issued the legal permit for withdrawal pending the FDA's findings.

**Importation of goods is deemed terminated:** (2012 BAR)
**a) When the customs duties are paid, even if the goods remain within the customs premises;**
**b) When the goods are released or withdrawn from the customs house upon payment of the customs duties or with legal permit to withdraw;**
**c) When the goods enter Philippines territory and remain within the customs house within thirty (30) days from date of entry;**
**d) When there is part payment of duties on the imported goods located in the**

**customs area.**

**SUGGESTED ANSWER:**

b) When the goods are released or withdrawn from the customs house upon payment of the customs duties or with legal permit to withdraw
Section 1202, Tariff and Customs Code

**Under the Tariff and Customs Code, as amended:**
**a. When does importation begin and when is it deemed terminated?**
**b. In what easels is the decision of the Collector automatically reviewed by the Commissioner of Customs? In what instance/s is the decision of the Commissioner automatically appealed to the Secretary of Finance?** (2015 Bar Question)

**SUGGESTED ANSWER:**
a. Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of the duties, taxes and other charges upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or incase said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.

b. Whenever the decision of the Collector of Customs is adverse to the government, the said decision is automatically elevated to the Commissioner of Customs for review, and if such decision is affirmed by the Commissioner of Customs, the same will be automatically elevated to and be finally reviewed by the Secretary of Finance.

2. Obligations of importer
a) Cargo manifest
b) Import entry
c) Declaration of correct weight or value
d) Liability for payment of duties
e) Liquidation of duties
f) Keeping of records

**The imported articles shall in any case be subject to the regular physical examination when:** (2012 BAR)

**a) The importer disagrees with the findings as contained in the government surveyor's report;**
**b) The number, weight and nature of packages indicated in the customs entry declaration and supporting documents differ from that in the manifest;**
**c) The container is not leaking or damaged;**
**d) The shipment is covered by alert/hold orders issued pursuant to an existing order.**

**SUGGESTED ANSWER:**

b) The number, weight and nature of packages indicated in the customs entry declaration and supporting documents differ from that in the manifest
Section 1401, Tariff and Customs Code, as amended by RA 7650.

F. Importation in violation of tax credit certificate
1. Smuggling

**Mr. Z made an importation which he declared at the Bureau of Customs (BOC) as "Used Truck Replacement Parts". Upon investigation, the container vans contained 15 units of Porsche and Ferrari cars.**

**Characterize Mr. Z's action. (1%) (2013 Bar Question)**
**(A) Mr. Z committed smuggling.**
**(B) Mr. Z did not commit smuggling because he submitted his shipment to BOC examination.**
**(C) Mr. Z only made a misdeclaration, but did not commit smuggling.**
**(D) Mr. Z did not commit smuggling because the shipment has not left the customs area.**

**SUGGESTED ANSWER:**

(A) Mr. Z committed smuggling.
Under Section 3602 of the Tariff and Customs Code of the Philippines, fraudulent or false declaration of imported or exported articles is smuggling.

**Choose the correct answer. Smuggling - (1%)**
**(A) does not extend to the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practices; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties.**
**(B) is limited to the import of contraband or highly dutiable cargo beyond the reach of customs authorities.**
**(C) is committed by any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell or any manner facilitate the transportation, concealment or sale of such article after importation, knowing the same to have been imported contrary to law.** (2014 Bar Question)

**SUGGESTED ANSWER :**

C. Smuggling is committed by any person who shall fraudulently import into the Philippines, or assist in so doing, any article, contrary to law, or shall receive,

conceal, buy, sell, or any manner facilitate the transportation, knowing the same to have been imported contrary to law.

**(c) Differentiate *outright smuggling* from *technical smuggling.* (3%)**
**(d) Distinguish *compromise* from *abatement* of taxes. (3%) (2017 BAR)**

***SUGGESTED ANSWER:***

c) Outright smuggling refers to importation of goods and articles of commerce without the required importation documents, or are disposed of in the local market without having been cleared by the Bureau of Customs or other authorized government agencies, to evade the payment of taxes, duties, and other charges.

Technical smuggling, by contrast, refers to importation of goods and articles through fraudulent, falsified or erroneous declarations to substantially reduce or avoid payment of correct taxes, duties, and other charges.

d) Compromise is the remedy that may be resorted to when there is (i) a reasonable doubt as to the validity of the claim against the taxpayer exists; or (ii) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

Abatement, by contrast, is the remedy that may resorted to when (i) the tax or any portion thereof appears to be unjustly or excessively assessed; or (ii) The administration and collection costs involved do not justify the collection of the amount due.

All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud. (Section 204 of the NIRC).

2. Other fraudulent practices
G. Classification of goods
1. Taxable importation

2. Prohibited importation
3. Conditionally-free importation

H. Classification of duties

**Is an article previously exported from the Philippines subject to the payment of customs duties?** (2011 Bar Question)

**(A) Yes, because all articles that are imported from any foreign country are subject to duty.**

**(B) No, because there is no basis for imposing duties on articles previously exported from the Philippines.**

**(C) Yes, because exemptions are strictly construed against the importer who is the taxpayer.**
**(D) No, if it is covered by a certificate of identification and has not been improved in value.**

**SUGGESTED ANSWER:**
(D) No, if it is covered by a certificate of identification and has not been improved in value.

1. Ordinary/regular duties
*a. Ad valorem*; methods of valuation
i. Transaction value
(ii) Transaction value of identical goods
(iii) Transaction value of similar goods
(iv) Deductive value
(v) Computed value
(vi) Fallback value
b) Specific

**The dutiable value of an imported article subject to an *ad valorem* rate of duty under existing law shall be: (2012 BAR)**
**a) The home consumption value;**
**b) The total value;**
**c) The total landed cost;**
**d) The transaction value.**

**SUGGESTED ANSWER:**

d) The transaction value
Section 201, Tariff and Customs Code, as amended by RA 8181 dated March 28, 1996

2. Special duties

a. Dumping duties

b. Countervailing duties

c. Marking duties
d. Retaliatory/discriminatory duties

**Discriminatory duties may NOT be imposed upon articles: (2011 Bar Question)**
**(A) wholly manufactured in the discriminating country but carried by vessels of another country.**
**(B) not manufactured in the discriminating country but carried by vessels of such country.**

**(C) partly manufactured in the discriminating country but carried by vessels of another country.**
**(D) not manufactured in the discriminating country and carried by vessels of another country.**

**SUGGESTED ANSWER:**

(D) not manufactured in the discriminating country and carried by vessels of another country.

e. Safeguard
I. Remedies

1. Government
a. Administrative/extrajudicial

i. Search, seizure, forfeiture, arrest

**On the basis of a warrant of seizure and detention issued by the Collector of Customs for the purpose of enforcing the *Tariff and Customs Code,* assorted brands of liquor and cigarettes said to have been illegally imported into the Philippines were seized from a store operating in a Freeport zone. The store owner moved for the quashal of the warrant on the ground that the Collector of Customs had no jurisdiction to enforce it within the Freeport zone.**

**Should the motion to quash be granted? (3%)**

***SUGGESTED ANSWER:***

No, the motion to quash should not be granted. Section 300 of the Customs Modernization and Tariff Act vests on the Bureau of Customs the power to enforce tariff and customs law within the Philippines, including Freeport zones. The designation of Freeport Zones as a separate customs territory does not divest the Bureau of Customs of its power to effect seizure and forfeiture of goods imported in violation of the tariff and customs law. Hence, the motion to quash should be denied.

b. Judicial

i. Rules on appeal including jurisdiction

**What is the rule on appeal from decisions of the Collector of Customs in protest and seizure cases? When is the decision of the Collector of Customs appealable to the Court of Tax Appeals? Explain.** (2010 Bar Question)

**SUGGESTED ANSWER:**

Decisions of the Collector of Customs in protest and seizure cases are appealable to the Commissioner of Customs within 15 days from receipt of notice of the written decision of the Collector.

As a rule, decisions of the Collector of Customs are not appealable to the CTA. However, if the Collector does not decide a protest for a long period of time, the inaction may be considered as an adverse decision by the Collector of Customs and the aggrieved taxpayer may appeal to the CTA, even without the Collector's and Commissioner's actual decision.

**Which cases are appealable to the CTA?** (2012 BAR)
**a) Decisions of the Secretary of Finance in cases involving liability for customs duties, seizure, detention or release of property affected;**
**b) Decisions of the Commissioner of Customs in cases involving liability for customs duties, seizure, detention or release of property affected;**
**c) Decisions of the Collector of Customs in cases involving liability for customs duties, seizure, detention or release of property affected;**
**d) Decisions of the BIR Commissioner in cases involving liability for customs duties, seizure, detention or release of property affected.**

**SUGGESTED ANSWER:**

b) Decisions of the Commissioner of Customs in cases involving liability for customs duties, seizure, detention or release of property affected
Section 7, RA 9282.

**MSI Corp. imports orange and lemon concentrates as raw materials for the fruit drinks it sells locally. The Bureau of Customs (BOC) imposed a 1% duty rate on the concentrates. Subsequently, the BOC changed its position and held that the concentrates should be taxed at 7% duty rate. MSI disagreed with the ruling and questioned it in the CTA which upheld MSI's position. The Commissioner of Customs appealed to the CTA en bane without filing a motion for reconsideration.**

**Resolve the appeal. (1%)**(2013 Bar Question)

**(A) The appeal should be dismissed because a motion for reconsideration is mandatory.**
**(B) The appeal should be dismissed for having been filed out of time.**
**(C) The appeal should be given due course since a motion for reconsideration is a useless exercise.**
**(D) The appeal should be upheld to be fair to the government which needs taxes.**

**SUGGESTED ANSWER:**
(A) The appeal should be dismissed because a motion for reconsideration is mandatory.

The present case is similar to the case of *Commissioner of Customs vs. Marina Sales, Inc.* (G.R. No. 183868, November 22, 2010) where the Supreme Court held that Rule 8, Section 1 of the Revised Rules of Court of Tax Appeals requires that "the petition for review of a decision or resolution of the Court in Division **must** be preceded by the filing of a timely motion for reconsideration or new trial with the Division." The word "must" clearly indicates the mandatory, not merely directory, nature of a requirement."

2. Taxpayer

a. Protest

**A protest against an assessment issued by the Collector of Customs for unpaid customs duties on imported goods shall be filed with:** (2012 BAR)

**a) The Commissioner of Customs;**
**b) The Regional Trial Court;**
**c) The Court of Tax Appeals;**
**d) The Collector of Customs.**

**SUGGESTED ANSWER:**
d) The Collector of Customs. Section 2308, Tariff and Customs Code

b. Abandonment
c. Abatement and refund

V. Judicial Remedies (R.A. No. 1125, as amended, and the Revised Rules of the Court of Tax Appeals)

A. Jurisdiction of the Court of Tax Appeals
1. Exclusive appellate jurisdiction over civil tax cases
a. Cases within the jurisdiction of the court *en banc*
b. Cases within the jurisdiction of the court in divisions

**State at least five (5) cases under the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA). (5%) (2016 BAR)**

***SUGGESTED ANSWER:***

The following cases are under the exclusive appellate jurisdiction of the Court of Tax Appeals.

1. Exclusive appellate jurisdiction to review by appeal:
2. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in

relation thereto, or other matters arising under the NIRC or other laws administered by the BIR;

3. Inaction of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period of action, in which case the inaction shall be deemed a denial;
4. Decisions, orders or resolutions of the RTC in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;
5. Decisions of the Commissioner of Customs in cases involving liability of customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs; and
6. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals.
7. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs adverse to the Government under Sec. 2315 of the Tariff and Customs Code; and
8. Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture, in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sec. 301 and 302. respectively, of the Tariff and Customs Code, and safeguard measures under R.A. No. 8800, where either party may appeal the decision to impose or not impose said duties.
9. Exclusive appellate jurisdiction in criminal offenses:
    A) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respective territorial jurisdiction; and
    B) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

**The City of Liwliwa assessed local business taxes against Talin Company. Claiming that there is double taxation, Talin Company filed a Complaint for Refund or Recovery of Illegally and/or Erroneously-collected Local Business Tax; Prohibition with Prayer to Issue Temporary Restraining Order and Writ of Preliminary Injunction with the Regional Trial Court (RTC). The RTC denied the application for a Writ of Preliminary Injunction. Since its motion for reconsideration was denied, Talin Company filed a special civil action for certiorari with the Court of Appeals (CA). The government lawyer representing the City of Liwliwa prayed for the dismissal of the petition on the ground that the**

**same should have been filed with the Court of Tax Appeals (CTA). Talin Company, through its lawyer, Atty. Frank, countered that the CTA cannot entertain a petition for certiorari since it is not one of its powers and authorities under existing laws and rules.**

**Decide.** (2014 Bar Question)

**SUGGESTED ANSWER :**

The petition for *certiorari* before the CA must be dismissed, since such petition should have been filed with the CTA. As stated in City of Manila v. Caridad H. Grecia-Cuerdo (G.R. No. 175723, February 2, 2014, 715 SCRA 182), the CTA has the power to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing interlocutory orders in cases falling within the CTA's exclusive appellate jurisdiction. The CTA therefore has jurisdiction to issue writs of certiorari in such cases. Furthermore, its authority to entertain petitions for *certiorari* questioning interlocutory orders issued by the RTC is included in the powers granted by the Constitution and inherent in the exercise of its appellate jurisdiction.

**GGG, Inc. offered to sell through competitive bidding its shares in HHH Corp., equivalent to 40% of the total outstanding capital stock of the latter. JJJ, Inc. acquired the said shares in HHH Corp. as the highest bidder. Before it could secure a certificate authorizing registration/tax clearance for the transfer of the shares of stock to JJJ, Inc., GGG, Inc. had to request a ruling from the BIR confirming that its sale of the said shares was at fair market value and was thus not subject to donor's tax. In BIR Ruling No. 012-14, the CIR held that the selling price for the shares of stock of HHH Corp. was lower than their book value, so the difference between the selling price and the book value of said shares was a taxable donation. GGG, Inc. requested the Secretary of Finance to review BIR Ruling No. 012-14, but the Secretary affirmed said ruling. GGG, Inc. filed with the Court of Appeals a Petition for Review under Rule 43 of the Revised Rules of Court. The Court of Appeals, however, dismissed the Petition for lack of jurisdiction declaring that it is the CTA which has jurisdiction over the issues raised. Before which Court should GGG, Inc. seek recourse from the adverse ruling of the Secretary of Finance in the exercise of the latter's power of review?** (2015 Bar Question)

**SUGGESTED ANSWER:**

GGG should file its petition with the Court of Tax Appeals. The Supreme Court held that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the CTA which has the authority to issue, among others, a writ of certiorari in the exercise of its appellate jurisdiction.

**The BIR assessed the Babuyan Water District (BWD) with deficiency income taxes amounting to P8.5 million, inclusive of interest and surcharge. The BWD disputed the assessment, and argued that it was a wholly-owned government entity performing essential government functions. However, the BIR denied the protest.**

**The BWD filed a petition for arbitration in the Office of the Secretary of Justice pursuant to Sections 66 to 71, Chapter 14, Book IV of the *Administrative Code of 1987* to assail the denial of its protest, and to seek the proper interpretation of Section 32(8)(7)(b) of the *Tax Code* that excluded from gross income the income derived by the Government or its political subdivisions. The Secretary of Justice rendered a decision declaring the BWD exempt from the payment of income tax.**

**The Commissioner of Internal Revenue appealed to the CTA on the sole ground that the Secretary of Justice had no jurisdiction to review the assessment of the BIR.**

**Is the appeal meritorious? Explain your answer. (4%) (2017 BAR)**

***SUGGESTED ANSWER:***
No, the appeal is not meritorious. Under Section 7(a) of the RA 9282, the CTA has no jurisdiction over decisions of the Secretary of Justice in arbitration petitions under the Administrative Code.

Hence, the appeal should be dismissed for lack of jurisdiction.

2. Criminal cases
a. Exclusive original jurisdiction

b. Exclusive appellate jurisdiction in criminal cases

B. Judicial procedures
1. Judicial action for collection of taxes

a. Internal revenue taxes

b. Local taxes
i. Prescriptive period

2. Civil cases
a. Who may appeal, mode of appeal, effect of appeal

i. Suspension of collection of tax

a. Injunction not available to restrain collection
ii. Taking of evidence
iii. Motion for reconsideration or new trial

b. Appeal to the CTA, *en banc*
c. Petition for review on *certiorari* to the Supreme Court

3. Criminal cases
a. Institution and prosecution of criminal actions

i. Institution of civil action in criminal action

**After filing an Information for violation of Section 254 of the National Internal Revenue Code (Attempt to Evade or Defeat Tax) with the CTA, the Public Prosecutor manifested that the People is reserving the right to file the corresponding civil action for the recovery of the civil liability for taxes. As counsel for the accused, comment on the People's manifestation.** (2015 Bar Question)

**SUGGESTED ANSWER:**

I will move for the denial of the manifestation. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized.

b) Appeal and period to appeal
(i) Solicitor General as counsel for the people and government officials sued in their official capacity
c) Petition for review on *certiorari* to the Supreme Court
C. Taxpayer's suit impugning the validity of tax measures or acts of taxing authorities
1. Taxpayer's suit, defined

2. Distinguished from citizen's suit

3. Requisites for challenging the constitutionality of a tax measure or act of taxing authority
a. Concept of *locus standi* as applied in taxation
b. Doctrine of transcendental importance
c. Ripeness for judicial determination

VI. Documentary Tax

**In a civil case for Annulment of Contract of Sale, plaintiff Ma. Reklamo presented in evidence the Contract of Sale which she sought to be annulled. No documentary stamp tax on the Contract of Sale was paid because according to plaintiff Ma. Reklamo, there was no need to pay the same since the sale was not registered with the Register of Deeds. Plaintiff Ma. Reklamo is now offering the Contract of Sale as her evidence. Is the Contract of Sale admissible?** (2014 Bar Question)

**SUGGESTED ANSWER:**

No. The Contract of Sale cannot be admitted in evidence. The document is clearly taxable because the law imposes a documentary stamp tax (DST) on Sales and Agreements to Sell, and Memoranda of Sale (*Section 175, NIRC).* Since the DST thereon is not paid, the effect is that the instrument, document or paper which require by law to be stamped and which has been signed, issues, accepted and transferred without being duly stamped shall not be recorded, nor shall it be used in evidence in any court until the requisite stamp or stamps shall have been affixed thereto and cancelled (*Section 201, NIRC).* In the case at bar, no documentary stamp tax was paid on the Contract of Sale, hence, it cannot be used as her evidence in court.